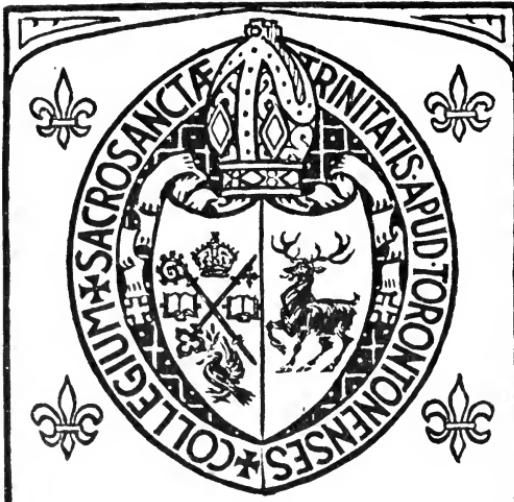


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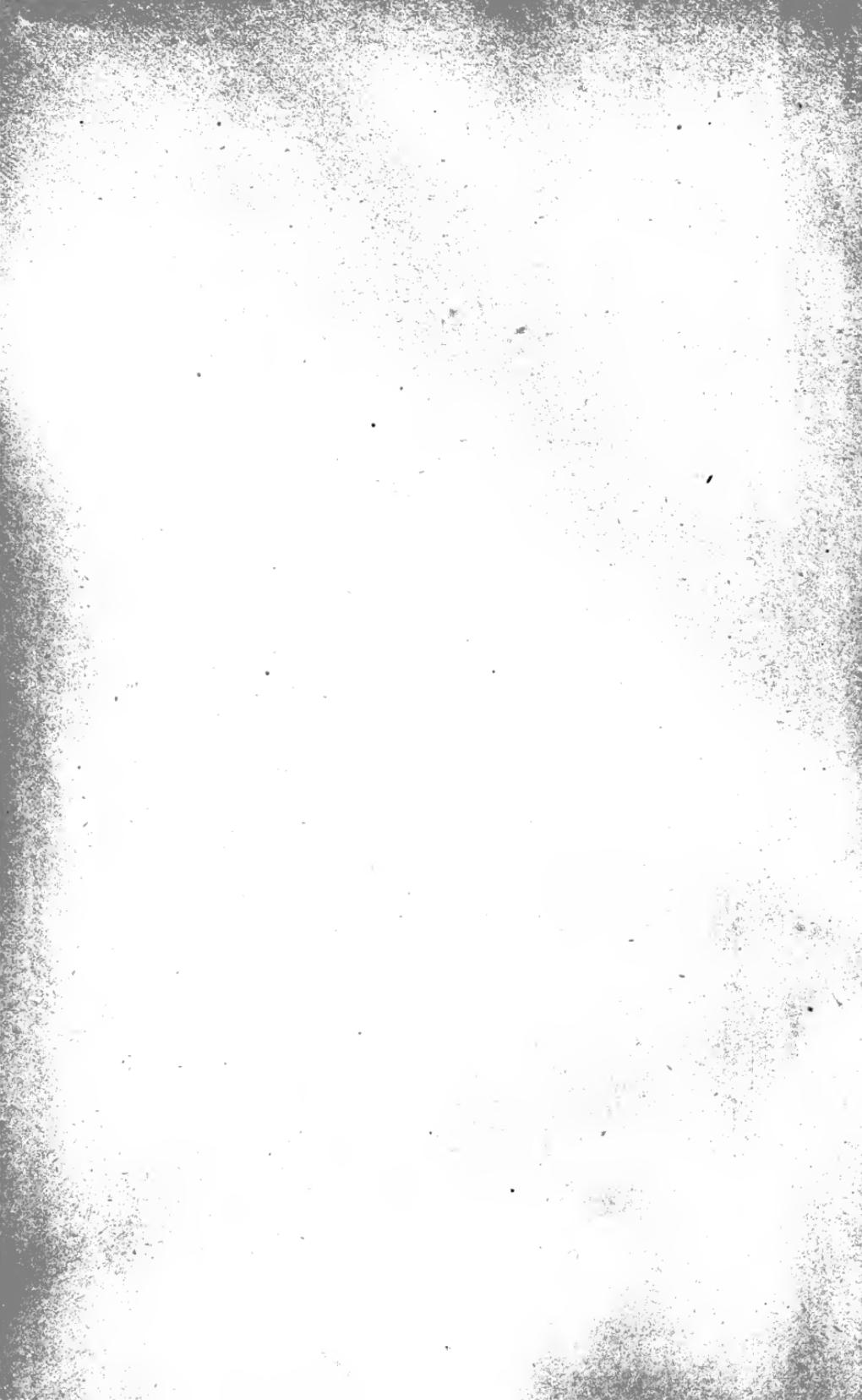
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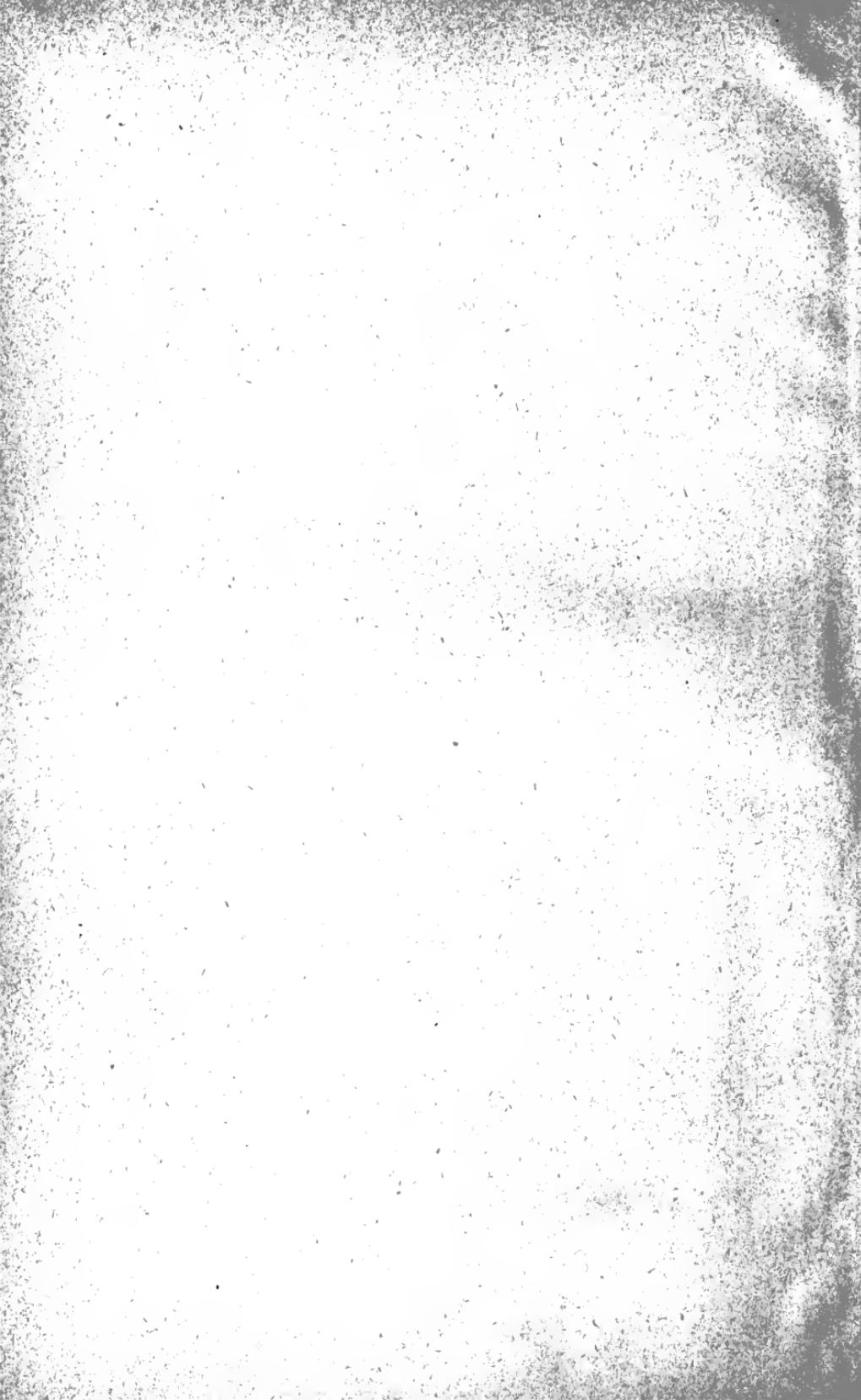
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# CANON LAW

BY THE SAME AUTHOR.

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NOTE.—The 'Introduction to the Study of Dogmatic Theology' (1858), is *out of print*. The 'Essay on the Communion of Saints' *perished* by fire on Messrs. Paul, Trench, & Co.'s premises in April, 1883.

# INSTITUTES OF CANON LAW

BY THE

REV. ROBERT OWEN, B.D.

AUTHOR OF 'AN INTRODUCTION TO THE STUDY OF DOGMATIC THEOLOGY'  
'SANCTORALE CATHOLICUM' 'AN ESSAY ON THE COMMUNION OF  
SAINTS' 'THE PILGRIMAGE TO ROME, A POEM' ETC.



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## P R E F A C E.

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THE PRESENT WORK was commenced near twenty years ago at the instance of the late Bishop of Salisbury, the saintly Walter Kerr Hamilton. He complained to the writer that his clergy continually put questions to him, which ‘the faintest tincture of Canon Law’ on their part might have obviated. In those days one rarely met with any who paid attention to the subject: now we hear of ‘most eminent Canonists’ in our midst, yet somehow they manage to hide themselves, and remain veiled Prophets. Two works however have recently appeared, professedly translated or adapted from foreign sources (Pelliccia and Le Queux,) not claiming the merit of original research, yet deserving respectful or kindly notice.

On the Bishop’s demise, I naturally shrank from prosecuting an ungrateful task. Warned by the evening-star of life, I now resume it, as a tribute of respect and affection to the only Anglican prelate, whose friendly regard I could in any sense claim. Whether he would have endorsed my judgments herein expressed, I cannot say. Events have come to pass, which call for an out-spoken utterance on

subjects, which usually demand and obtain a decorous, even timid, reserve. I write with the full sense of my responsibility to God; and am therefore undeterred by the cavils that wait on unwelcome statements, and look only unto the last remunerations.

1. Before I touch the points, which seem to me requisite to the profitable application of the Canon Law, I would beg to warn the reader what he must *not* expect to find herein. If anyone understands by 'ecclesiastical Law' the product of legal rulings and Statute Law, let him refer to Cripps and Phillimore, I know nothing of it, and do not pretend to interpret the ways of the Establishment. My province is to call attention to the principles and rules, whereby the Catholic Church grew to maturity. If much thereof still survives in the usages of the English Church, it is well. But Acts of Parliament and decisions of lawyers are not germane to the constitution of the Church of God.

Again, seeing that the Canon Law has no practical independent working among us, I have not touched the complex machinery once employed in its operation.

Again, I recognize no distinction of 'Roman' and 'English' Canon Law. What profits it to set up a phantom of Independence of Rome, on the ground of local differences, when the profession of *Catholicity* should lead us to seek points of union rather than of divergence? What Primate of All England, from

Augustine to Warham, would not have revolted from the notion of separation from the See of S. Peter, “unde exorta est sacerdotalis unitas”? How are matters mended by acknowledging the Constitutions of Papal Legates (Otho and Othobon,) as part of ‘English Canon Law,’ while girding at the Rescripts of their Papal masters, especially when we find so many of the latter addressed to English bishops and intended for *their* guidance, yet forming part of the Roman Canon Law?

A Doctor in Canon Law at Oxford was one who proceeded in *the Decrees* or Canon Law.<sup>1</sup> Henry VIII. would never have abrogated that Decree, had it not borne too close a relation to Rome. In truth, the most part of the Roman Canon Law is merely the tradition common to both the East and West. At the same time I allow that a great difference exists between the ancient Canon Law while the Roman empire stood, and the later portion which grew up during the tutelage of the barbarians. And it is with a feeling of despondency that I read the endorsement by Fleury of the pretensions set forth by the Bull *Unam Sanctam*.<sup>2</sup> Still, I feel it a great inconvenience to attempt to set aside, if possible, Papal enactments which have been allowed to stand even in Protestant jurisprudence. And if I must reject Papal decrees, let me be excused accepting Legatine constitutions.

<sup>1</sup> Anthony à Wood, *Fasti Oxonienses*, Vol. I.

<sup>2</sup> See below, Chap. XVIII. § 1. Note.

2. The extinction of the monasteries was fatal to the study of Canon Law. Henry Siddall in A.D. 1536 was the last Oxford Bachelor in Canon Law. One may find traces of some study thereof, as also of Scholastic Divinity, in the Caroline Divines; a circumstance which renders their resolutions so much clearer and more solid than those of later writers versed in the declamatory treatises of the Latin Fathers.

At the beginning of the eighteenth century a certain antiquarian revival took place connected with the debates in Convocation; but ever in humble vassalage to the Statute Law, (as in Bishop Gibson's Codex,) or spoilt by homely vulgarity, (as, e.g. in John Johnson's Notes on the English Canons.)<sup>1</sup>

3. Pardon me, worthy reader, if I advert to two former works, as supplying a corrective to the feeling of depression induced by dwelling on the details of Canon Law; for I venture to think thy feeling will correspond to my own? For, surely, it *is* depressing, to come across such abundant proofs of the *earthy* defilement which the Kingdom of God has encountered in its passage 'under the cloud and through the sea.'<sup>2</sup> To think of that Kingdom as a thing to be right cunningly managed by leaders of parties and by hierarchs, whose success depends on machinery and worldly gear, is of a nature to crush the soul of a

<sup>1</sup> As e.g. when he says that Stephen Langton "could no more humble himself to *the old gentleman at Rome* than to his prince at home."—Vol. II. p. 97.

<sup>2</sup> I. Corinthians X. v. 1.

believer. No! Luther's grand words "Ein feste Burg ist unser Gott" must be his stay; no human device avails, nought save an absolute recurrence to Him Alone, whence cometh our help. In my somewhat rugged Treatise of Dogmatic Theology, I admitted the teaching of Augustine on Predestination and Election, not because I was biassed in favour of Calvin, (for I share Archbishop Laud's feeling that there is something in these questions "unmasterable in this life"); but because the endorsement of the precise Five Treatises of Augustine on Grace by the See Apostolic proved to me that the Western Church was in full accord with the same. I never could admit that the xvii.<sup>th</sup> chapter of S. John refers merely to a Predestination to, say rather prevision of, the means of Grace in this life; a doctrine so favourable to a heartless formalism: yet would I not pursue "enquiries so audacious as to come within command of the flaming swords."<sup>1</sup> In my "Sanctorale Catholicum" I set forth examples of the manner wherein the Saints of God have been uplifted by the same inspiration to tread more resolutely the steep path which leads from Jericho to the heavenly Jerusalem.<sup>2</sup>

In the present work, the Vth Chapter bears witness of the struggle to escape from the deadening influence of a strict logic in the region of Faith.

<sup>1</sup> Sir Thomas Browne, Of Vulgar Errors, Book I. ch. 5.

<sup>2</sup> See Sanct. Cath. pp. 16, 188, 204, 265, 311, 376, 390, 397-400, 447.

For the chapter of ‘Of irregular Ministries,’ I desire to submit it to the correction of more solid judgments. Let me say, I have no wish to advocate needless violation of canonical usage.

4. Two important points remain to be noticed, which the study of the Canon Law sets in the strongest light. They are intimately related and need not be treated separately.

The first is, the necessity that grows on the Church to resolutely reject the usurpations that have long lurked under cover of the Royal Supremacy, but which neither add to the dignity of the Crown nor in any true sense enhance the loyalty of the subject.

The second is, the necessity that exists for an admission, in direct terms, on the part of a National Church claiming to form an integral portion of the whole, that is, the Catholic Church, that it is bound in matters of doctrine and essential discipline by the judgment of the said Catholic Church. I say, the judgment of the Catholic Church, as it has come down to us through the centuries past, on the broad lines of general consent and harmony of its portions. Not of the Primitive Church only; for that were to relegate judgment to the few scholars, who alone can properly resolve for us what has passed into the domain of learned research.<sup>1</sup>

<sup>1</sup> For example, much of the language of our Prayerbook, much of our hierarchical government, as deliberately retained by the Reformers,—even the familiar collect for “our Bishops and *Curates*,” savours of the Canon Law.

Without the admission of the two propositions above laid down, it is in vain for us of the English Church to be ever appealing (as we do formally and corporately in our Prayerbook) to “the mind and purpose of the old Fathers”; or to resist innovations as “striking at some established doctrine or laudable practice of the Catholick Church.”<sup>1</sup> If, because we cannot approve of statements, or practice modes of worship, which we are persuaded have grown out of the exaggeration or misconception of Primitive thought and action, we further proceed to declare we may not, because of the same, hold communion with other Churches, which yet we admit to be integral portions of the One, Holy, Catholick and Apostolick Church, we void our own profession, and virtually set up “the Anglican Paddock” (to use Mr. Gladstone’s expression) instead of that One Church. The term *Paddock*, employed by a master of language, exactly denotes the actual condition of the English Church, as the Reformation Statutes have left it. She is regarded by her maintainers as a portion of the one Field of God, wherein the future harvest of souls is being dressed and ripened. She is practically a *paddock* fenced off from the field by national legislation. The Church of England endorses the doctrine of Nationalities after the manner of Basil and Constance; condemns no other nations, but prescribes to

<sup>1</sup> Preface to Book of Common Prayer.

her own people only.<sup>1</sup> She admits no foreign jurisdiction, (I say not, of the Bishop of Rome,) but “neither the jurisdiction of a mother-Church, nor of a particular Church, nor of a provincial synod;”<sup>2</sup> nor yet of any standing committee or other representative of the Western Church; no, nor of the Catholic Church of God. What hath she formally and directly reserved for the judgment of the whole or Catholic Church? The language of her Divines does not bind her, nor can it be juridically pleaded, not is it unisonous. The primitive Church of Antioch, though taught by a Barnabas and a Paul, judged not itself sufficient to resolve questions of vital importance, but referred to the apostles and elders at Jerusalem for final resolution. ‘It seemed good to’ the said apostles and elders, as ‘to the Holy Ghost,’ ‘to lay upon’ the appellant Church some ‘burden,’ even ‘necessary things;’ they sent their legates Judas and Silas, and the church of Antioch ‘rejoiced for the consolation’. Nor did the authority of the whole Church terminate there; but ‘throughout Syria and Cilicia’ and also ‘throughout Phrygia’ Paul and Silas “delivered them the decrees for to keep, that were ordained of the apostles and elders which were at Jerusalem. And so were the churches established in the faith.”<sup>3</sup> If therefore it be maintained that when a Church be-

<sup>1</sup> Prayerbook, “Of Ceremonies.”

<sup>2</sup> Thorndike, Vol. I. Part II. p. 818. Oxford Ed.

<sup>3</sup> Acts XV. 2, 28, 31, 41. XVI. 4, 5, 6.

comes National or co-extensive with a Nation, it therefore is released from inter-dependent relations with churches of distinct nationality, that is, foreign churches, such a pretence proclaims the exclusive principle of *Nationalism*, foreign to the mind of the Apostles, and destructive of that Unity which established the Faith and secured its increase.

5. But grant that the decay of Religion, which the general demand for a Reformation antecedent to Henry VIII. implies, called for action; and that, on the refusal of the Roman Patriarch or of foreign Catholic Princes to initiate such action, the Sovereign of a Christian country was entitled to *reform*, that is, restore the decays of the Church within his realm, still “against or without the authority of the Church the authority of sovereign power is not pleadable at the day of judgment.”<sup>1</sup> Yet hath Parliament (Hooker’s ‘lay synod’) ventured to annex all “manner of jurisdictions” to the Imperial Crown of England<sup>2</sup> to “the weakening and suppressing of ordinary jurisdictions—which a jurisdiction so disagreeable to the constitution of the Church must needs produce.”<sup>3</sup> If this were allowable according to the constitution of the Church, then the sin of Uzza in his self-constituted guardianship of the ark, and that of Saul in anticipating Samuel’s sacrificial function, are equally unintelligible.

<sup>1</sup> Thorndike, Vol V. p. 361.

<sup>2</sup> I Eliz. cap 1.

<sup>3</sup> Thorndike, Vol. I. Pt II. p. 818.

6. But, notwithstanding the amplitude of terms whereby the Royal Supreme Jurisdiction has been *legally* expressed, what proof is there of any *mala fides* on the part of the State, any desire to extinguish the right of the Church and its inter-dependence on the Whole or Catholic Church? *In limine*, awkward facts confront us. When the Clergy submitted to Henry VIII., we have ever understood it was with the reservation “Quantum per Christi legem licet”; but we learn lately from published Calendars of State Papers, it was further qualified by “et quatenus per leges Canonicas liceat.” Not only was it denied them, but the first clause, on the strength whereof the Clergy made their submission, was fraudulently omitted in the amended Act.<sup>1</sup> Such was the *honesty* of Henry and his ‘lay Synod.’ Another significant fact is this, namely, that the same keen-sighted Monarch abolished the study of the Canon Law and its position in the universities; well knowing how fatal it was to his pretensions, even when shorn of the Papal Decretals. Yet, surely, “the Pope’s Canon-law,” as also that whereby the Eastern Church is governed, though it may not have the force to bind us, is “derived from those rules, whereby the disciples of our Lord and their successors governed the primitive Church in unity.”<sup>2</sup>

7. The evil consequences of the admission of such

<sup>1</sup> *Sanctorale Catholicum*, p. 305.

<sup>2</sup> *Thorndike*, Vol. V. pp. 107–8.

unlimited and un-Catholic pretensions advanced on behalf of the Crown were to some extent kept back by the *bona fides* of successive sovereigns. If in ancient times the Church had reason to applaud the ecclesiastical intervention of a Theodosius and a Marcian, nothing but disaster overtook the *Unitive* of Zeno, the *Exposition* of Heraclius, and the *Type* or *Standard* of Constans. If good resulted from the practical provisions of the *Capitularies* of Charlemagne, what can be said of the theological hobby of that high-handed Monarch, the *Filioque* clause in the Nicene Creed, save that by his self-will the schism between the East and West was matured, and that not the Pope but the ‘godly Prince’ was the harbinger of Revolution? In England, Elizabeth was at least no worse enemy to the spiritual interests of the Church than her advisers in Church and State. Of the good intentions of the two first Stuart Kings, I need not speak. Yet, as a matter of fact, Charles resumed the *Regale* (well founded or usurped) to its full extent. I deem it impossible for any honest Churchman, at all versed in Antiquity and loyal to its teaching, to refuse all sympathy to the Puritan contention, or to thoroughly reconcile the action of Charles and Laud with that of Ambrose and Thomas of Canterbury. Yet I must judge that the Stuart King and his minister strove for the Church with the very best intentions under specially difficult circumstances. Presently these friendly clouds will disperse,

and reveal in its full deformity the idol set up by the Defender of the Faith, bedizened though it be with the gilded tinsel of pretended Restoration of ancient Jurisdiction: I mean, *the Erastian doctrine*, “which makes the Church and the whole right of the Church to stand only by the law of the land, and not at all by God’s law”;<sup>1</sup> that, “which vulgar professors of the laws of the land set up to themselves,—to reduce the whole jurisdiction of ecclesiastical courts under the jurisdiction of the laws of the land, and those courts that minister the same;” and which voids the article of our creed that professes ‘one Catholic Church’.<sup>2</sup>

The Presbyterian Robert Baillie clearly lets us see its prevalence in the Long Parliament. “The body of the lawyers,” he writes, “another strong party in the house, *believing all Church government to be a part of the civil and parliamentary power, which nature and Scripture has placed in them, and to be derived from them to the ministers only so far as they think expedient.*”<sup>3</sup> In our day we have witnessed the triumph of this fatal principle in the ominous birth of the Public Worship Regulation Act and in the recent proposal of a supreme tribunal of laymen in causes spiritual.

These facts, in truth, amount to a re enactment of the arbitrary Act I. Eliz. cap. 1, without the plea of

<sup>1</sup> Thorndike, Vol. V. p. 364.

<sup>2</sup> Ib. p. 447.

<sup>3</sup> Letters, Vol. II. p. 336. Edinburgh, 1841.

Romo-phobia, which might have served to palliate the original assumption.

8. Here it may be said, that for an English clergyman to reflect on the reverend estimation of ‘the High Court of Parliament’ is an unseemly, if not disloyal, act. Whatever those of other religions may say, they of the English Church may not presume to doubt the immaculate purity and righteous motives of the framers and approvers of such measures. True it is, we picture Law in the abstract as descending from the Mount of God, if not radiant with Divine light, yet bearing in its lineaments certain traces of the converse of Angels.

But ah! how comes it, that with the progress of Liberal ideas we find it blurred and seamed by marks of conflict, recalling, not the sweet light of heaven, but “darkness, and tempest, and the voice of words”?<sup>1</sup> Is it not the fact, that the unfaithfulness of legislators to their better traditions has caused their most powerful chief to forge fetters for their licence?

And that when the choice occurs of the introduction or exclusion of malignant elements, never contemplated in the wildest dreams of our forefathers, the finest intellect among the framers of Law can find no better solution than that of repealing a tax of scanty homage to the Blessed and Only Potentate? “Ah! Liberty, what crimes are committed in thy

<sup>1</sup> Hebrews, XII. 18.

name!" Is there not grave cause to fear that, unheard by human ears, the aweful words are uttered above, *Migremus hinc!*

9. Such considerations, I submit, should absolve me from blame, when I exercise (though a priest) my right of an English citizen in censuring certain unhappy passages in our law-making.

But I shall be told that a choice jury of my countrymen has expressed its confidence in the meetness and safety of *legal* wisdom in the final arbitrement of spiritual questions; and that when the Primate of All England is satisfied therewith, the vulgar have but to hear and to obey. Such a doctrine may be commended to slaves, but must be rejected by true men who value their Christian liberty. We may fairly assume that eminent personages had an eye to policy suggested by present emergencies. But even so, policy will never excuse a clean departure from the constitutional rules of the Church. It is enough to remark that the best of Christian Emperors was of quite another mind. For, says Theodosius, "if it is a Church cause, let the civil judges have no share touching such examination, but let the most holy bishop put an end to it according to the sacred canons."<sup>1</sup> This seems in itself so reasonable, that even Hobbes accepts it, saying, "The ruler of the State, so far as he is a Christian, is bound, where there is a question of the mysteries of

<sup>1</sup> 'Regulus'. Authentic. 123, c. xxi. § 2.

the faith, to interpret Holy Scriptures *by means of Churchmen rightly ordained.*<sup>1</sup> And I observe with satisfaction that the Right Hon. Sir Robert Phillimore, the only member of the late Church Courts Commission, whom we may presume professionally versed in the Canon Law, endorsed the sentiment; namely, that “the determining of the matter of ecclesiastical law, as well as of controversies of faith, belongs to those that have authority in the Church by the foundation of it.”<sup>2</sup>

When the best of Christian Princes, the gravest of our divines, are agreed that the final decision should rest with the clergy; when even Hobbes sees the reasonableness thereof,—can it be indeed that the Prelacy of England are ready to hand over the resolution of grave spiritual causes to lawyers, who treat the same as a comedy, and by unseemly jests convulse their court with laughter!<sup>3</sup> Can it be, that, when the old idols collapse from very rottenness, we should be invited to set on foot the anti-climax of Reformation?

10. But it may be asked, would the Church of England willingly acquiesce in the ruling and decision of Bishops as at present appointed, without guarantee

<sup>1</sup> De Cive, c. xvii. § 18. p. 160.

<sup>2</sup> Thorndike, *Just Weights and Measures* c. xx. Vol. V. p. 220.

<sup>3</sup> Themis enjoys her jokes hugely. Now she pictures a clerk wearing a mitre or three hats! Now she cannot “say whether it were worse for a clerk to persist in wearing an illegal vestment than to be seen walking about with a young woman?” (I follow the report of the ‘Church Times’ newspaper, Dec. 10. 1883.)

of their will or ability to decide ‘according to the sacred canons,’ the very condition marked as essential by the emperor Theodosius? The solution of this question involves the peril of my contention, for it not obscurely points to a *possible* disintegration of our old, historic, long-cherished Church of England. Not that the peril is evaded by the acceptance of the Erastian programme. That will surely precipitate disaster. I find it easier to say in reply, what the constitution of the Catholic Church requires in the appointment and government of Bishops. Mark then, 1. that “*always the service which every one did his Church*, was that which entitled him to the nomination of the clergy, to the suffrage or approbation of the people, to the consent of the suffragan bishops, and especially of the metropolitan. This was and will be always, the catholic form of electing bishops.”<sup>1</sup> And 2. that “it is in vain to talk of regular government by the canons of the Church, without restoring the liberty of synods to the respective provinces.”<sup>2</sup> Where these conditions are in abeyance, the episcopate must fail to secure its just influence.

11. To resume the situation. The Providence of God has now brought the Church of England face to face with the revolution wrought by her forefathers, through the criminal supineness of the clergy, the daring assumption of the laity. She can no longer charge ‘some slanderous folk’ with needless

<sup>1</sup> Thorndike, *ubi supra*, p. 267.

<sup>2</sup> *Ibid.* p. 461.

offence, nor plead that “we give not to our Princes the ministering either of God’s Word, or of the Sacraments.”<sup>1</sup> If this be meant of actual *personal* ministration, which of our Princes ever cared, or were likely to care, to mount the pulpit or to baptize or to celebrate? But if its meaning be in the larger sense of Administration, *supreme direction, arbitration, and interpretation*, let the Acts 25 Henry VIII. c. 19, and 1 Eliz. c. 1. resolve the point. They will presently let us know who is the Supreme Judge of heresy. The Royal Commission has been providentially guided to stigmatize the said revolution as ‘innovation’, and its result as the conversion of the Government of the Church into “a function of the King in his Chancery:”<sup>2</sup> a function, it appears, so carelessly discharged that “no regard whatever was paid to the qualifications of the judges for their office!”<sup>3</sup>

It was, in fact, the subjugation of the clergy to the laity in the spiritual sphere; the submission of the teachers to the taught, of the pastors to their flocks. It merges the Catholic Church in the cherished institutions of England. Instead of a return to the avowed principle of the English Reformation, namely, the restoration of a decayed fabric on the lines of primitive Christianity, the Commission proposes to the acceptance of the English Church a new Supreme Court on the model

<sup>1</sup> Article xxxvii.

<sup>2</sup> Report, pp. xxxii. and xl.

<sup>3</sup> Ibid. p. xlili.

of three predecessors, whose working they themselves brand as “morally bad” and generally unsatisfactory. The new Court to consist of *nominal* members of the Church, bound by no doctrinal standard whatever of the Church, yet by force of circumstances ready to affix to her traditional formularies the withering glosses of legal technicality, and so to exhibit to the world the divorce of Faith and Dogma in a State-Church! Bound, I should add, by “that duty they owe to the publick;”<sup>1</sup> which, experience shows us more and more, means obedience to demagogic influences!

12. Regard for a moment how Churches are affected by crises of this nature.

A Church, like individuals, must witness to some principle, if it is not to lose its savour and perish. The Nicene Church fought to the death for the vital difference effected by a single *iota* in the Creed. The parties in conflict at the Reformation furnished martyrs to the principles they respectively cherished as dear life. The Scottish Covenanters, the English Nonjurors, ennobled human nature by their sufferings for their Ideal. For what principle will a Church, controlled by politicians and lawyers, be prepared to do or to suffer? For the fulness of the Athanasian Faith? For the sanctity of the Christian Law of Marriage? For the freedom of the Church School? She will sit and dream on over the Delectable Moun-

<sup>1</sup> Preface to Book of Common Prayer.

tains, not daring to combat those that forge her fetters, trusting to the broken reeds that wave so fairly, whiles the irremovable stream of Time hurries past and is gone for ever.

13. What the result may prove to be, I dare not forecast. On the one hand the Erastian principle is now so deeply engrained in the nature of our church-people, that we find them even founding episcopal sees at a lavish cost, with the intention of adding fresh gems to the ecclesiastical tiara of the sovereign. The clergy, who live on the Patrimony of Jesus Christ, are shrewdly tempted to hold their peace, when they see its *prizes* dispensed by the stewards of Erastus. Little acquainted in general with the precedents of Church History, and therefore easily imposed upon by plausible statements, they are unable or unwilling to question the legitimacy of pretensions advanced under cover of the Royal Prerogative. How often we find them succumbing to the influence of wealth and ‘the pride of life’, which the State-alliance is apt to foster, while they can lecture the working man on the blessings of poverty, which they are not ambitious to share! How often the ‘authority’, allowed to our prelacy, proves to be only the shimmer of “the silver cup, whereby indeed my lord divineth”<sup>1</sup> the set of the popular current! Alas! that the brave Presbyterians of Scotland should have been ready to count ‘Establishment’ as dross sooner than imperil their

<sup>1</sup> Genesis xliv. 2, 5.

spiritual freedom ; while our leaders seem to tolerate a proposal to accept the final ruling of ‘Cæsar’s friend’ or of him ‘who cared for none of these things.’

On the other hand, it is hard to conceive of such teeming religious life and frequent self-sacrifice, such as Catholic teaching has called forth in the Establishment, as doomed to perish under the icy breath of Erastianism ; that a Church, which hath within a century put forth so many thriving offshoots all the world over, should yet herself possess no recuperative energy !

But of one thing we may be sure, that if the miserable proposal take effect, no sane person will thenceforth confound the Kingdom of Heaven with a Body, whose supreme government will be *deliberately and of set purpose* converted into a function of the Civil judicature. No longer will it be possible to treat Dissenters as ‘schismatics,’ when the beam will darken our own eyes. The claims of Rome will be immensely strengthened, as offering the most logical expression of Church Authority. The halo of imagination, which still plays about the heritage of the old Church of England, will be rudely dissipated. Let those who even now profit by its influence, count the cost ere it be too late ! Costly church building, the extension of the Episcopate, the multiplication of works of mercy,—these things were the bloom on the grapes of the Catholic Vine ;—tokens of the revival of Church doctrine in our midst. When that

doctrine is impaired and discredited, as surely it must be when expounded by lawyers, will not its fruits likewise perish ?

14. Let the reverend Prelates study to be more jealous for the spiritual independence and historic continuity of their Church than zealous to “ do full justice to the Royal Supremacy.”<sup>1</sup> They may read a wholesome lesson in the hard hap of the Elizabethan Bishops, who having sold themselves to do the will of the lay Supreme Governor, experienced the trick of *partial Disestablishment*, and were pleasantly bidden by the sapient Cecil to seek their balance in the more active preaching of the Word. Already they may hear a person, holding high office in the state, proclaiming the Church Establishment “ an injustice to all outside its pale.” Even in view of such a clear incentive to spoliation, the Statesman at the helm sees nothing “ which should restrain the liberality ” of such as desire to be shorn by Erastus.<sup>2</sup> How deep then will be the guilt of those who, hearing this, may yet consent to *renew the Church's Charter of Slavery !*

15. The Canon Law is a mirror which reveals the true nature of the cleavage in our continuity with the Catholic Church, which we are now invited to perpetuate. I at least cannot bring myself to offer this meagre sketch of the Canon Law to the notice of

<sup>1</sup> Bishop of Oxford's Speech at the Reading Church Congress.

<sup>2</sup> Utterances of Right Hon. Messrs. Chamberlain and W. E. Gladstone, Dec. 11th 1883.

the Clergy, dissembling the light it throws on the dangers of the present conjuncture. I cling to the hope that the Church of England may yet be shielded by the prayers of the numerous Saints she has bred ; that the manifold blessings bestowed on her may prove God's gifts 'without repentance.'

But if she fails, the Church of God is founded upon a Rock, and the Lord remaineth a King for ever!

## POSTSCRIPT.

ON the 4th of January last the most learned Bishop on the Bench (Dr. Wordsworth of Lincoln) thus expressed his judgment touching the Proposal of the Church Courts Commissioners : "If the Church of England were to accept as her Court of Final Appeal a tribunal of five laymen with powers to determine matters ecclesiastical, she would place herself in opposition to Holy Scripture, to the ancient Catholic Church, *and to her own principles and practice*, and to those of other reformed Churches whom she regards with reverence and affection." (Letter in 'Church Times' of Jan. 25.)

To balance this testimony of the venerable Prelate, we have a statement by his former Chancellor (now his Superior and Primate,) that after all the five laymen would not be *a court*, (not in name, possibly, but if they determine the final issue of a spiritual question, the distinction turns out to be without practical difference;) "but that there should be responsibility thrown upon the Primate, *in accordance with the traditions of the State*." (Report of Convocation in 'Ch. Times' of Feb. 15.) Remarkable words truly ! Well might the Bishop of Lincoln reply "*after a pause.*" I must own to reading them with a feeling of dismay.

A High-Churchman would probably repel with indignation the charge of Erastianism preferred against words employed by his Grace ; yet we may ask, Could any words better convey the position of Erastus, that the clergy should be responsible to the State even in spiritual causes, ignoring the independent claim of the Church *in toto* ? The Church of England may not play fast and loose with principle more than other people. She may not one moment act as the instrument of the State, at another pose as the successor of the Apostles. Surely we might expect the chief Minister of a pure and Apostolic Church, (as the phrase runs,) to refer rather to "*the traditions of the Church*" than to those of the

State. But I will avow my belief that the Archbishop has herein only frankly formulated the *practice* of the Church of England since the Reformation; though her *pretensions*, as supported by Divines, favour Bishop Wordsworth's statement. I cannot condemn Cranmer whole-sale for his Erastian subserviency to the Sovereign, when I see Laud rendering his yearly Accounts to King Charles, pretty much as a Roman Primate might to the Pope. And I have pointed out below in Part I. Chap. LI. § 4, that something of the kind existed in the Byzantine Empire, and now exists in Russia. But Byzantine and Russian precedents are not precisely things to be cherished or perpetuated. Nor do they reach the cynical simplicity of the Report. The Russian Governing Synod, with its all-powerful lay Procurator, comes nearest to it. The Byzantine Patriarch had his Home-Synod to aid him. Cranmer as well as Laud might plead that they were Amariahs (II. Chron. xix. 11) rendering their account to the 'godly Prince' Jehosaphat.

Far different are our circumstances, when, not our most gracious Sovereign Lady on the Throne, but the multitudinous Democracy in its rear is master of the situation. Judging from Archbishop Parker's expressed disgust at Knox's Reformation, ("*the people* to be orderers of things"!) I venture to doubt whether Cranmer would be bold enough to undertake responsibility to the Sovereign People.

A Primate needs Atlantean shoulders, truly, to bear an odious responsibility without Synodal support. If his responsibility carries not with it the consent of the Church, what is the value of it to the State? If it reaches the point of committing the Church to false issues on matters of Doctrine, the examples of Pope Honoriūs,—of Nestorius, Archbishop of Constantinople the New Rome and Oecumenical Patriarch,—prove the abuse of Authority ends in the discredit of him who wields it. And an abuse of Authority it will be, and a violation of the Right of the Church, for any Archbishop to make himself responsible for the tampering of ignorant laymen with the Dogma of the Church.

Now what does the Report propose? That even in a cause touching the Faith, be the Primate ever so orthodox as a man, he will be bound to pronounce the final resolution of five lawyers, though it traverse the decision of the Spirituality. Henry VIII. flattered the English Spirituality that they were so well seen in divinity, that they needed not to appeal beyond the seas for resolu-

tion. But now they are so enfeebled, that five laymen can better interpret Church documents than they. Now we all know what civilians decided in the case of Jenkins v. Cooke. That, because the apostasy of evil angels is not expressed in the Creeds or Articles of Religion, a man may deny it and the existence of evil angels, and retain his right to communicate. As if the words "Who for us men and for our salvation came down from heaven" did not imply the entire Theology of the Church. I find Thorndike's judgment demolishes the proposed (well, not 'Court') but oracular Tripod of lay divines. "How shall God's law that enableth the body of the Church to bind and to loose—but requireth the Apostles and those that hold under them to pronounce the sentence,—enable the sovereign power to do the same, *and yet require those that claim from the Apostles to execute?*" If philosophers have the privilege to justify such contradictions as these, then may this opinion pass for truth." (Principles of Christian Truth, Book I. ch. 19.)

In conclusion, if I write strongly and as an alarmist, is there not a cause? I seem to hear the knell of the old order of things. Our modern prophets bid the Church adapt herself to the times and not "lose touch of the people." (Convocation Report, Feb. 15.) The tactics of Jesuits are coming into fashion once more, and we hope by insincere methods to outwit and cajole the sturdy intelligence of Mr. Spurgeon's company (the Dissenters.) We shall see. But meantime I again draw attention to the fact, that our Rulers are fast using up the new Patrimony, which the genius of Newman, the deep learning and patience of Pusey, acquired for the Church of England. They truly laboured; others, who have not borne the burthen and heat of the day, have entered into their labours. Will they presume to say that the prosperity they enjoy is not largely the fruit of the Catholic Movement, which checked the disintegration of the 'Reform Bill' Period? If they think that a few compliments in holes and corners will atone for action violating their Benefactors' principles, they mistake.

It would seem as if Hickes and Leslie, Keble and Hurrell Froude, had written in vain; that Bishop Gray had in vain warned us of the perils incurred by the Church, by reason of the persistent encroachments of the now no longer personal Royal Supremacy. It is difficult to guess what people now understand by Erastianism; for if Thorndike is correct (and I know not his

equal) on the subject, we must have drank deeply of its Circean cup.

The out-look is ominous ; for many will come to feel, when the legal Tripos is set up, that *Disestablishment is a necessity*, or that the monarchy of Rome or the republic of Calvin are forms of regiment preferable to an episcopal oligarchy set in action by five lawyers. My apology for writing must be that of Thorndike ; If I hold that which dependeth more necessarily upon the rule of faith, which containeth the substance of the Scriptures, it will be no way prejudicial to the authority of the Church, that a private man as I am should conclude it for truth against the greater authority, in matters depending upon the foundation of the Church. (Of the Principles of Christian Truth, Bk. I. ch. VII. § 23.)

R. O.

# CONTENTS.

---

## *PART THE FIRST.*

### CHAPTER I.

#### OF LAW, NATURAL AND DIVINE.

	PAGE
§ 1. Of Natural or Moral Law . . . . .	1
2. Of Divine Law . . . . .	1

### CHAPTER II.

#### OF CANONICAL SCRIPTURE.

§ 1. Its authority supreme . . . . .	2
2. The Canon not Apostolic . . . . .	2
3. Translations of it, when forbidden? . . . . .	3

### CHAPTER III.

#### OF CANON LAW.

§ 1. Its sources and authority . . . . .	3
--	---

### CHAPTER IV.

#### OF THE CATHOLIC CHURCH.

§ 1. Its present divisions . . . . .	6
--------------------------------------	---

### CHAPTER V.

OF THE MYSTICAL CHURCH, OR KINGDOM OF GOD .	9
	b

## CHAPTER VI.

OF NATIONAL CHURCHES . . . . .	PAGE 11
--------------------------------	------------

## CHAPTER VII.

THAT THE VOICE OF THE CATHOLIC CHURCH CONCLUDES THE  
CONSENT OF NATIONAL CHURCHES.

§ 1. Intercommunion of Councils &c. not only <i>useful</i> , but neces- sary to Unity . . . . .	14
2. Oath of Supremacy ambiguous . . . . .	16
3. The Canon Law a permanent memorial . . . . .	16

## CHAPTER VIII.

THAT THE VOICE OF THE CATHOLIC CHURCH FINDS EXPRESSION  
IN GENERAL COUNCILS.

§ 1. How the law stands . . . . .	17
2. How the fact stands . . . . .	17
3. Such expression is abnormal . . . . .	18

## CHAPTER IX.

OF THE INERRANCY OF GENERAL COUNCILS.

§ 1. What 'inerrancy' implies . . . . .	18
2. Admissions of moderns . . . . .	20

## CHAPTER X.

OF NATIONAL OR PROVINCIAL COUNCILS.

§ 1. When and by whom to be summoned . . . . .	20
2. Their powers . . . . .	21
3. Exemplified by the Church of England . . . . .	21

## CHAPTER XI.

OF CUSTOM.

§ 1. Custom abrogates Law . . . . .	22
2. Custom, when available? . . . . .	23
3. Laws fallen into desuetude do not bind the conscience . . . . .	24
4. Abrogation of Desuetude . . . . .	24

## CHAPTER XII.

## OF JURISDICTION IN GENERAL.

	PAGE
§ 1. Not taken in a strict sense . . . . .	26
2. As lodged in the Apostles and the Universal Church . . . . .	26

## CHAPTER XIII.

## OF COERCIVE JURISDICTION.

§ 1. Jurisdiction, in the view of the Canon Law, coercive . . . . .	27
2. And is derived from the State . . . . .	27
3. Its origin . . . . .	28

## CHAPTER XIV.

## ORIGIN OF THE EPISCOPAL HIERARCHY . . . . . 28

## CHAPTER XV.

## OF PATRIARCHS AND PRIMATES.

§ 1. Of Patriarchs ; their duties . . . . .	30
2. Of lesser Patriarchs or Primates . . . . .	31

## CHAPTER XVI.

## OF THE PREROGATIVE OF THE POPE IN THE CATHOLIC CHURCH.

§ 1. Double source of the Pope's authority . . . . .	31
2. Nature of his prerogative . . . . .	33

## CHAPTER XVII.

## HOW ANCIENT PRECEDENTS RESPECTING IT AFFECT BRITAIN.

§ 1. Primacy of Rome early recognised . . . . .	34
2. The Cyprian Privilege . . . . .	35
3. The resolution . . . . .	35

## CHAPTER XVIII.

## THE POPE'S SUPREMACY, ITS DEVELOPED FORM.

§ 1. Primacy converted into Absolute Dominion . . . . .	35
2. The power of the Pope as limited by Canonists . . . . .	36
3. The Pope may not bind his successor . . . . .	37

## CHAPTER XIX.

## OF THE JURISDICTION OF METROPOLITANS.

	PAGE
§ 1. Distinction between Archbishops and Metropolitans . . . . .	38
2. When they may exercise jurisdiction over their suffragans . . . . .	38
3. Of Metropolitical Visitation . . . . .	39
4. The Metropolitan Church, the norm of Ritual . . . . .	40
5. Appeals to Rome of old discouraged in England . . . . .	40

## CHAPTER XX.

OF THE SYNODAL RELATIONS OF METROPOLITANS AND  
THEIR SUFFRAGANS.

§ 1. Their rights in Synod are co-ordinate . . . . .	41
2. Innovations in Anglican practice . . . . .	41

## CHAPTER XXI.

## OF HOLY ORDERS.

§ 1. The Episcopate, <i>not</i> a distinct order, in the view of the Canon Law . . . . .	42
2. Holy Orders indelible . . . . .	43

## CHAPTER XXII.

## OF THE ELECTION OF BISHOPS.

§ 1. In whom originally vested . . . . .	43
2. The origin and progress of the <i>Regale</i> , 1. in the East. 2. in the West. 3. in Britain . . . . .	45
3. Exceptions against a bishop-elect . . . . .	47
4. King's license, when necessary? . . . . .	47
5. Bishops acquire no spiritual right from Royal authority . . . . .	47

## CHAPTER XXIII.

## OF THE CONFIRMATION OF BISHOPS.

§ 1. It holds, though the election be null . . . . .	47
2. Canonists' view of the virtue of Confirmation . . . . .	48
3. Contrary to the primary end of Episcopacy . . . . .	8
4. An Elect not removable . . . . .	48
5. An Elect holds his preferments till he is confirmed . . . . .	48

	PAGE
§ 6. Effect of Installation . . . . .	49
7. An Elect, not styled <i>Bishop</i> before consecration . . . . .	49
8. Case of Bishop refused admission to his See . . . . .	49

## CHAPTER XXIV.

### OF THE POSTULATION OF BISHOPS . . . . . 49

## CHAPTER XXV.

### OF THE EXAMINATION OF BISHOPS.

§ 1. Qualifications of a Bishop . . . . .	50
2. Adherence to Tradition required . . . . .	50
3. Preaching, a special Episcopal function . . . . .	50
4. Some practical knowledge required . . . . .	51
5. Physical disqualifications . . . . .	51

## CHAPTER XXVI.

### OF THE CONSECRATION OF BISHOPS.

§ 1. Why <i>three</i> Consecrators required . . . . .	51
2. Supposed flaws in the Roman and Anglican successions . . . . .	51
3. Ceremonial not necessary to the conferring of Orders . . . . .	52
4. Nor the celebration of the Eucharist . . . . .	52
5. Custom of Scotland and Wales . . . . .	52
6. Case of the Episcopal Order conferred <i>per saltum</i> . . . . .	52
7. Anglican practice . . . . .	53

## CHAPTER XXVII.

### OF THE FUNCTIONS OF BISHOPS.

§ 1. Their duty in regard to preaching . . . . .	53
2. And to government . . . . .	53
3. Procurations, why paid? . . . . .	54
4. The lesser functions of a Bishop . . . . .	54

## CHAPTER XXVIII.

### OF THE RELATIONS OF BISHOPS WITH THEIR CLERGY.

§ 1. A Bishop's behaviour . . . . .	55
2. His hospitality . . . . .	55

## CHAPTER XXIX.

## OF THE BISHOP'S DUTY WITH REGARD TO ORDINATION.

	PAGE
§ 1. Ordaining on a Title, why required? . . . . .	56
2. Extent of the bishop's liability in regard to the ordained . . . . .	56
3. Letters of Orders . . . . .	57
4. A Bishop's duty in regard to ordaining by Letters dimissory . . . . .	57

## CHAPTER XXX.

## INCIDENTS OF EPISCOPACY.

§ 1. Erection of new Sees . . . . .	57
2. Rule for the spiritual provision for divers nationalities in the same diocese . . . . .	57
3. Episcopal cities . . . . .	58
4. <i>Peculiar</i> jurisdiction . . . . .	58
5. A Bishop not to be a Canon in his own cathedral . . . . .	58

## CHAPTER XXXI.

## OF THE TRIAL OF BISHOPS.

§ 1. Who admissible as accusers or plaintiffs? . . . . .	59
2. Ancient system of Synodical trial . . . . .	59
3. Number and quality of the judges . . . . .	60

## CHAPTER XXXII.

## OF THE TRANSLATION OF BISHOPS . . . . . 60

## CHAPTER XXXIII.

## OF THE RENUNCIATION OF BISHOPS . . . . . 61

## CHAPTER XXXIV.

## OF BISHOPS CO-ADJUTORS AND SUFFRAGANS.

§ 1. Of Co-adjutor Bishops . . . . .	62
2. Of Suffragans, properly so called . . . . .	63
3. Suffragans of Canterbury . . . . .	63
4. Suffragans, improperly so called . . . . .	63
5. Of Bishops without charge or diocesan functions . . . . .	64

**CHAPTER XXXV.**  
**OF INFERIOR PRELATES.**

	PAGE
§ 1. Who so styled? . . . . .	64
2. Of the Vicar General . . . . .	64
3. Of the Office of Archdeacon . . . . .	64
4. Of Archidiaconal visitations . . . . .	65
5. Of the Office of Archpriest . . . . .	66
6. Of Rural Deans . . . . .	66

**CHAPTER XXXVI.**  
**OF THE RELATIONS OF BISHOPS AND CHAPTERS.**

§ 1. The action of Bishop and Chapter, how independent? . . . . .	67
2. What the majority of a Chapter may do . . . . .	67
3. Cases in which a minority may act . . . . .	68
4. Canons may not exchange houses without the Bishop's leave .	68

**CHAPTER XXXVII.**  
**OF THE EXAMINATION OF CLERKS.**

§ 1. Of the training of candidates for Orders . . . . .	68
2. Conditions of Ordination . . . . .	69
3. Of Canonical Obedience . . . . .	69
4. Who to be excluded from Orders? . . . . .	70

**CHAPTER XXXVIII.**  
**OF THE SPIRITUAL CAPACITIES OF CLERKS.**

§ 1. Their obligation to Divine Service . . . . .	70
2. Restricted by the Parochial System . . . . .	71
3. Their duty as to Preaching . . . . .	71
4. What constitutes a Collegiate Church? . . . . .	72
5. Of Perpetual Curates or Vicars . . . . .	72

**CHAPTER XXXIX.**  
**OF THE CONTINENCE OR CELIBACY OF CLERKS.**

§ 1. The object of the Law of Continence . . . . .	72
2. Not anciently enforced . . . . .	73

	PAGE
§ 3. Its grave miscarriages . . . . .	74
4. Its abrogation justified . . . . .	74
5. Case of a <i>married</i> Pope . . . . .	75

### CHAPTER XL.

#### OF THE LAWS REGULATING THE CLERICAL LIFE.

§ 1. Clerks may possess property . . . . .	75
2. Priests, when incapacitated ? . . . . .	76
3. Whether clerks may undertake civil functions ? . . . . .	76
4. Clerks may not fight &c. . . . .	77
5. Exceptional cases . . . . .	77
6. Clerks may not be present at, nor judge in, causes of blood . . . . .	78
7. Of the temperance of Clerks . . . . .	79
8. Of clerical costume . . . . .	79
9. Clerks may not engage in certain trades . . . . .	80
10. Games at cards, dice &c. forbidden to Clerks . . . . .	80
11. Hunting &c. how permitted to Clerks ? . . . . .	81

### CHAPTER XLI.

#### OF THE TRIAL OF CLERKS.

§ 1. The criminal and civil judicature of Antiquity with regard to Clerks . . . . .	81
2. Rules respecting the same . . . . .	82
3. Causes of deposition . . . . .	82
4. Who are to be accusers ? . . . . .	83
5. Who, judges? . . . . .	83
6. Clerk <i>not</i> to be put to open penance . . . . .	83
7. <i>Ad interim</i> condition of a deprived Clerk . . . . .	83
8. His condition upon restoration . . . . .	84

### CHAPTER XLII.

#### OF THE ORDINATION OF DEACONS . . . . .

84

### CHAPTER XLIII.

#### OF THE MINOR ORDERS.

§ 1. Acolytes, Exorcists, Readers, Ostiaries . . . . .	85
2. Of Parish Clerks . . . . .	86

## CHAPTER XLIV.

## OF BENEFICES.

	PAGE
§ 1. Church Property, the Patrimony of Jesus Christ . . . . .	86
2. Principle regulating preferment . . . . .	87
3. Special honour paid to rank and learning in conferring of benefices . . . . .	87
4. Of vacant Benefices . . . . .	87
5. Inheritance of Benefices dreaded . . . . .	88
6. Benefices, when liable to pay a Clerk's debts? . . . . .	88
7. Exchange of Benefices . . . . .	88
8. Plurality of Benefices, against Canon Law . . . . .	88
9. Plurality, a Gallican custom . . . . .	89
10. Temporalities not due, where the spiritual duties are neglected	89

## CHAPTER XLV.

## OF COLLATION AND INSTITUTION.

§ 1. Difference between Collation and Institution . . . . .	90
2. Collation not absolutely free . . . . .	90
3. An important condition . . . . .	90

## CHAPTER XLVI.

## OF THE RESIGNATION OF BENEFICES.

§ 1. Causes of Resignation : 1. Insufficiency, 2. Simony, 3. Avoid- ance of scandal, 4. Incorrect motives . . . . .	91
2. Resignation, how made? . . . . .	91

## CHAPTER XLVII.

## OF PARISH-CHURCHES, AND THEIR RIGHTS.

§ 1. Of the Formation of new Parishes . . . . .	92
2. Even against the will of the parson of the mother-church .	93
3. Of Parish Chapelries . . . . .	94
4. Of Proprietary Chapels . . . . .	94
5. In what cases may persons leave their parish church?	94

## CHAPTER XLVIII.

## OF THE RIGHTS OF PATRONAGE.

§ 1. Its origin and purpose . . . . .	95
2. Its possession, how proved? . . . . .	95
3. How acquired? . . . . .	96
4. Purchase forbidden . . . . .	96

	PAGE
§ 5. Patron may not present himself . . . . .	96
6. Rules respecting Joint-Patrons . . . . .	96
7. Rights of Founders . . . . .	97
8. Difference between ecclesiastical and lay Patrons . . . . .	97
9. Rights of Royal Patrons in England . . . . .	97

### CHAPTER XLIX.

#### OF THE SPIRITUAL CAPACITIES OF LAY-PEOPLE.

§ 1. As to preaching . . . . .	98
2. As to baptizing . . . . .	99
3. As to jurisdiction . . . . .	99
4. Do Kings acquire an ecclesiastical character by their unction? 100	

### CHAPTER L.

#### OF THE AUTHORITY OF PRINCES OVER THE CHURCH.

§ 1. The true ground of the Royal Supremacy . . . . .	100
2. Jurisdiction of Church and State intermingled . . . . .	102
3. The outcome, Erastianism . . . . .	104

### CHAPTER LI.

#### OF THE INVASION OF ECCLESIASTICAL JURISDICTION BY THE CIVIL POWER.

§ 1. Civil Usurpation bred by the Papal Schisms . . . . .	105
2. The Erastian principle avowed and acted on in England . . . . .	105
3. How qualified? . . . . .	106
4. Russian, Byzantine, Gallican analogies . . . . .	106
5. Views of Hooker, Selden, Hobbes . . . . .	107
6. Operation of Hooker's 'Lay Synod' . . . . .	107
7. Latest fruit off a wild olive-tree . . . . .	108

### CHAPTER LII.

#### OF THE ALLIANCE OF CHURCH AND STATE.

§ 1. The Alliance not itself the cause of corruption . . . . .	108
2. Its advantages . . . . .	110
3. The benefit of the argument shared by the Papacy . . . . .	111
4. Perils of the Alliance . . . . .	112

*PART THE SECOND.*

## CHAPTER I.

## OF BAPTISM.

	PAGE
§ 1. The essentials of Baptism . . . . .	115
2. Sponsors not essential to Baptism . . . . .	115
3. Of Immersion . . . . .	116
4. Of Aspersion . . . . .	117
5. Fees for Baptism forbidden . . . . .	117
6. Baptizing Priest becomes a spiritual Father . . . . .	117
7. Of baptism by lay people . . . . .	117
8. Of baptism in private houses . . . . .	117

## CHAPTER II.

## OF CONFIRMATION.

§ 1. Why reserved to Bishops? . . . . .	118
2. Delegated to priests . . . . .	118
3. Chrism, why employed? . . . . .	118
4. Of Change of Name at Confirmation . . . . .	118

## CHAPTER III.

## OF THE EUCHARIST.

§ 1. The Eucharist, a Sacrifice . . . . .	119
2. Eucharistic Oblations . . . . .	119
3. Matter of the Eucharist . . . . .	119
4. The law of celebration of, and assisting at, the Eucharist	120
5. Of daily Celebration . . . . .	120
6. Of monthly Communion . . . . .	120
7. Touching celebrants and communicants . . . . .	121
8. Communion, when to be avoided? . . . . .	121
9. Of Evening Communion . . . . .	122
10. Of Celebration in an unconsecrated building . . . . .	123

## CHAPTER IV.

## OF PENANCE.

§ 1. Contrast of ancient and modern times . . . . .	123
2. Of public or open Penance . . . . .	124

	PAGE
§ 3. Of the Apportionment of Penance . . . . .	125
4. Mediæval abuses . . . . .	126
5. Penances, unequally applied . . . . .	126
6. Of the Reconciliation of Penitents . . . . .	127
7. Of Conversion, ancient and modern . . . . .	127
8. Auricular Confession, how introduced? . . . . .	128
9. Its object . . . . .	128
10. Caution respecting it . . . . .	129
11. Rules concerning private or auricular Confession . . . . .	129
12. Why Penance and Confession left optional in the Anglican Church? . . . . .	130

### CHAPTER V.

OF UNCTION OF THE SICK . . . . .	131
----------------------------------	-----

### CHAPTER VI.

#### OF MATRIMONY.

§ 1. The Christian Law of Marriage . . . . .	132
2. Of Marriage contracts . . . . .	132
3. Forced marriages null . . . . .	133
4. Origin of Banns of Marriage . . . . .	133
5. Use of the Ring in marriage . . . . .	133
6. Marriage in the face of the Church . . . . .	134
7. Marriages not to be in Lent . . . . .	134
8. Of clandestine Marriages . . . . .	134
9. Rules respecting the same . . . . .	134
10. Cohabitation may be enforced . . . . .	135
11. Condonation of adultery not necessary . . . . .	135
12. Of Divorce . . . . .	135
13. Marriage of adulterous parties . . . . .	135
14. Marriage of injured husbands . . . . .	136
15. Mixed marriages . . . . .	136
16. Marriage of cousins &c. . . . .	136
17. Marriage with spiritual kindred . . . . .	137
18. Of consecutive Marriages . . . . .	137
19. Marriage of polygamists . . . . .	138
20. Retrospective action of Matrimony . . . . .	138
21. Of Concubinage or <i>quasi</i> -Marriages . . . . .	139
22. Of Marriage with a deceased Wife's Sister . . . . .	139

## CHAPTER VII.

## OF THE CONSECRATION OF TIMES.

	PAGE
§ 1. Obligation of the Lord's Day . . . . .	140
2. Observance of Lent . . . . .	140

## CHAPTER VIII.

## OF THE CONSECRATION OF PLACES.

§ 1. Consecration of churches . . . . .	142
2. Consecration, how effected ? . . . . .	142
3. Reverence due to churches . . . . .	142
4. The Chancel or Sanctuary reserved for the officiating Clergy .	143
5. Of lay meetings in churches . . . . .	143
6. Churches may be fortified in case of need . . . . .	143
7. Reconciliation of churches . . . . .	143
8. Re-consecration of churches . . . . .	144
9. Of the Repairs of churches . . . . .	144
10. Of private Oratories . . . . .	144

## CHAPTER IX.

## OF THE CONSECRATION OF CIRCUMSTANCES OF WORSHIP.

§ 1. The principle of Liturgical Forms . . . . .	145
2. The design of Ritual . . . . .	146
3. Ritual of the Eucharist . . . . .	147
4. Of the Use of unleavened Bread . . . . .	148
5. Of the Chalice . . . . .	149
6. Minor points of Ritual . . . . .	149

## CHAPTER X.

## OF EXCESS OF CEREMONIES.

§ 1. Excess of Ritual condemned . . . . .	150
2. Also, Pantomimic shows . . . . .	150
3. Papal caution touching Ceremonies . . . . .	151

## CHAPTER XI.

## OF THE DIVINE SERVICE OF COMMON PRAYER AND PRAISE.

	PAGE
§ 1. Matins and Evensong . . . . .	152
2. Service to be <i>sung</i> in Cathedrals &c. . . . .	152
3. Of Music in Divine Service . . . . .	152
4. Of clerical Reading . . . . .	153

## CHAPTER XII.

## OF PRAYERS IN THE VULGAR TONGUE.

§ 1. Discordant doctrine of two Popes . . . . .	153
2. Of the Liturgy in the vulgar tongue . . . . .	154

## CHAPTER XIII.

## OF HOSPITALS AND RELIGIOUS HOUSES . . . . . 154

## CHAPTER XIV.

## OF BURIAL.

§ 1. Of Burial rites . . . . .	156
2. Of the Law of Burial . . . . .	156
3. Burial of Priests . . . . .	156
4. Right of burial in churches . . . . .	156
5. Burial of criminals . . . . .	157
6. Principle of Burial Fees . . . . .	157

## CHAPTER XV.

## OF TITHES.

§ 1. The Principle of Tithes . . . . .	158
2. Tithes, whether of Divine right? . . . . .	158
3. Of Tithes, Real and Personal . . . . .	159
4. Composition of Tithes, under what circumstances lawful? . . . . .	159
5. Tithes and Church dues go to the Parish-church . . . . .	160

## CHAPTER XVI.

## OF ALIENATIONS.

§ 1. Limitations of the same . . . . .	160
2. Solemn concessions bind successors . . . . .	161
3. Alienation, a fruit of Nationalism . . . . .	162

## CHAPTER XVII.

## OF SIMONY.

	PAGE
§ 1. What constitutes Simony? . . . . .	163
2. A Clerk taking duty for pay does not commit Simony . . . . .	163

## CHAPTER XVIII.

## OF HERESY AND SCHISM.

§ 1. What constitutes Heresy and Schism? . . . . .	164
2. Relations of the Church with heretics &c. . . . .	164

## CHAPTER XIX.

## OF PENAL LAWS AFFECTING HERETICS.

§ 1. The fundamental objection to them . . . . .	165
2. The argument in their favour . . . . .	166
3. S. Augustine no favourer of Persecution of heretics . . . . .	166
4. Its origin . . . . .	167

## CHAPTER XX.

OF SCHISM, WHEN ITS CRIMINALITY IS NOT CLEARLY DETERMINED . . . . .	167
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## CHAPTER XXI.

## OF IRREGULAR MINISTRATIONS.

§ 1. Effect of Public Estimation of the same . . . . .	168
2. Mere recognition by courtesy confers no right . . . . .	169
3. Are ordinations in schism mere nullities? . . . . .	169
4. Case of the foreign Protestants . . . . .	169
5. Remarkable judgment of Pope Innocent III. . . . .	170

## CHAPTER XXII.

OF SORCERY, WITCHCRAFT, &c. . . . .	171
-------------------------------------	-----

## CHAPTER XXIII.

OF USURY . . . . .	172
--------------------	-----

## CHAPTER XXIV.

## OF EXCOMMUNICATIO.

	PAGE
§ 1. The difference between the <i>greater</i> and the <i>lesser</i> Excommunication . . . . .	173
2. Under what conditions can Excommunication take place? . . . . .	173
3. Effect of an Appeal on Excommunication . . . . .	174
4. Communion not to be refused to the excommunicated, when his crime cannot be proved . . . . .	174
5. Loss of Excommunication, to whom due? . . . . .	175

## CHAPTER XXV.

## OF EXCOMMUNICATION OF RULERS.

§ 1. That of Bishops . . . . .	176
2. That of Princes . . . . .	176

# INSTITUTES OF CANON LAW.

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## PART THE FIRST.

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### CHAPTER I.

#### OF LAW, NATURAL AND DIVINE.

§ 1. THE Natural or Moral Law expresses the Creator's will, and is in its nature immutable; inasmuch as it is Light proceeding from the Divine Light, and partakes of that eternal Law, which dwells in the mind of God. The Canonical Scriptures, *as a whole*, being another expression of God's will, are consistent with the Moral Law; so that whatsoever is contrary to the one is also adverse to the other. Wherefore all Constitutions, whether ecclesiastical or civil, are to be utterly forsaken, if they be proved contrary to the Moral Law.<sup>1</sup>

§ 2. Moral Law and Divine Law are not co-extensive terms. Those precepts only, which the Apostles delivered to the Faithful *as received from the mouth of Christ*, are of Divine Law.<sup>2</sup> Further, all that is proved to proceed from the Holy Ghost, as e.g. when the Apostles spoke or wrote through the Spirit, must be regarded as part of the Divine Law. But Law set forth by the Governors of the Church is not properly called

<sup>1</sup> Decret. I. dist. 9.

<sup>2</sup> Reiffenstuel, I. p. 4. Hence the stringency of the Sacraments "ordained of Christ Himself."

Divine, but human. And you will mark this perpetually: for though God may seem to promulgate laws by the mouths of princes, and the Holy Ghost is presumed to speak through a General Council, yet is Divine Law more binding than human law.<sup>1</sup>

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## CHAPTER II.

### OF CANONICAL SCRIPTURE.

§ 1. DIVINE Law then is expressed in the Canonical Scriptures of the Old and the New Testaments, as interpreted by the Catholic Church, which is the authority “keeper of holy Writ,” and “hath authority in supreme controversies of Faith.”<sup>2</sup> Not only doth S. Augustine declare the mind of Antiquity, when he saith that “to those writers only who are now styled Canonical had he learnt to bear that reverence, that he should not venture to believe any of them had erred”;<sup>3</sup> but late in the Middle Ages Pope John XXII. speaks, in the very terms of the VI.<sup>th</sup> Article, of “the holy Scripture, whereby truly the Articles of the orthodox Faith *are proved.*”<sup>4</sup> Durandus says, “Though the Church hath God’s authority on earth, yet doth she not exceed the limits set by Scripture.”<sup>5</sup> And Peter De Ancharano adds, “That which the Church doth beyond the writings of the Evangelists, we are bound to defend by their writings.”<sup>6</sup>

§ 2. I discover no catalogue of books of Scripture, authorized by the Church, earlier than that supplied by the Council of Laodicea, A.D. 363. And therefore I must needs prefer the modest statement of Dr. Lardner<sup>7</sup> to the positive assertion of Bishop Cosin, that “the whole Canon was

<sup>1</sup> Panormitan. IV. fol. 80.    <sup>2</sup> Article XX.    <sup>3</sup> Ad Hieron. Epist. 19.

<sup>4</sup> Extravag. Tit. XIV. cap. 4.    <sup>5</sup> In Sent. II. Dist. 44., qu. 3, § 9.

<sup>6</sup> Super III. Decretal. Lib. III. Tit. 41, fol. 184.

<sup>7</sup> Works, Vol. IV. p. 101, Lond. 1835.

determined in the time of the Apostles";<sup>1</sup> which is indeed overthrown by the fact that the Apocalypse was long rejected by the churches of Asia Minor, which yet accepted 'the Shepherd' of Hermas. A vague tradition, unsupported by evidence, ascribes the authorization of the Canon to the Council of Nice.

§ 3. The Latin Church first began to forbid translations of the Scripture into the vulgar tongue at the Council of

Toulouse A.D. 1229, in consequence of the evil Translations of it, use made of it by the Manichees, known as when for bidden? Albigenses. This was to starve her own children, because some perverted the Gift of God! Thirty years previously Pope Innocent III. said, that to wish to understand the Scriptures and exhort according to them was laudable.<sup>2</sup>

### CHAPTER III.

#### OF CANON LAW.

'CANONS' signify the rules ordained for the government of the Church by the holy Fathers, chiefly, of the primitive Church, who bore rule as Bishops, and met in General and Provincial Councils to decree dooms on matters of faith and discipline. Of the said General Councils, the first four, namely, of Nicaea, Constantinople, Ephesus, and Chalcedon, "are of the greatest authority, for they extinguished heretical doctrines and established the order of the Church."<sup>3</sup>

Justinian, in his 131<sup>st</sup> *Novel* decrees that the canons of the first four General Councils should obtain the force of Law. The fifth and sixth General Councils, supplementing the above, together with the decrees of Roman

<sup>1</sup> Scholastical History of the Canon, ch. 4. London, 1672.

<sup>2</sup> Decretal. Greg. L. V. Tit. VII. c. 12. Fleury, Histoire Ecclés. L. LXXIX. c. 57.

<sup>3</sup> Can. 33 of Archbishop Aelfric, A.D. 957.

pontiffs, and the canons of many foreign Provincial Councils, if generally received and approved of, as well as those of English Provincial Councils and Constitutions of Papal Legates and of Archbishops, went to make up in England the substance of the Canon Law. That Law still operates as supplying precedents and rules, where not abrogated by solemn Acts of this Church and Realm. The Papal Decretals, inserted in the body of the Canon Law, were not regarded in France save as a written reason; nor observed, when contrary to the usages and liberties of the French Church.<sup>1</sup> Anciently however they were the judgments of the Popes in council with numerous Italian bishops.<sup>2</sup> The Decretals of Gregory IX. had the force of law in the German empire even in the last century, save such as were opposed to Imperial principles.<sup>3</sup> Nor are the Decretal Epistles of Popes alone among the extra-Conciliar utterances that help out the Canon Law. Weighty resolutions of holy Fathers obtain a *secondary* authority. For, as in the exposition of holy Scripture the weightier reason and knowledge purchase greater authority to such writers; so in the decision of controverted causes the dignity and power of Pontiffs procure for their sentence an ampler authority.<sup>4</sup>

If it be alleged that the Canon Law is out of date, as to force of law; yet must it be maintained, that, in face of the divisions that have long prevailed in the Church, that man and that Church, who order themselves by the uniform tenour of these rules, shall be those who make not, but *suffer*, the guilt of schism. The Appeal to Antiquity, which is the plea offered by the Anglican Church for *her* Reformation, is no device of the modern position. In A.D. 1311, a bishop presented to the Pope a memorial for reforming the Church in her head (meaning the Pope) and in her members, on the ground of recalling the

<sup>1</sup> M. D'Héricourt, Loix Ecclés. I. 106; *apud* Van Espen, Opp. Tom. I. p. 28. <sup>2</sup> Fleury, Discours X<sup>me</sup>.

<sup>3</sup> Schram, Inst. Jur. Eccles. 1774. <sup>4</sup> Gratiani Decret. I. dist. 20, c. 1.

observance of the ancient canons, chiefly of the Four General Councils.

The stream of the Canon Law drains the following channels: 1. the Apostolic Canons, which express the Church law of the first three centuries in the East. 2. The Code of the African Church, later in time, which embraces the Western canons. 3. The collection of Dionysius Exiguus, of great repute, embracing Decretals of the Popes from A.D. 386 to 497. 4. The Code of the Church of Rome, approved of by Pope Hadrian I. and by him presented to Charlemagne, which Thorndike would fain commend to the observance of the Church of England. The Greek canons, published by Bishop Beveridge with the notes of Balsamon and Zonaras, cover the same ground as the foregoing. 5. The collection of Martin archbishop of Braga, chiefly of Greek origin, with features proper to Spain. 6. The mendacious collection of Isidorus Mercator, more justly termed *Peccator*, ‘the Sinner,’ who *invented* Decretals of the early Popes previous to A.D. 386, advancing the pretensions of Rome to the height of his dreams. 7. The collection of Burchard bishop of Worms, which introduces laws of the Frank kings. 8. That of Ivo bishop of Chartres, which first borrows from the Civil Law of Justinian. 9. The *Decretum* of Gratian, a Benedictine monk of Bologna. 10. The *Decretals* of Pope Gregory IX. 11. The *Sext* of Boniface VIII. 12. The *Clementines* of Clement V. 13. The *Extravagants* of John XXII. To which may be added, as an authentic manual in England, the *Provinciale* of William Lyndwood bishop of S. David’s. The intimate connexion of the Canon with the Civil Law is avowed by Innocent III. in his reply to the King of Scots, “*juxta traditiones legum civilium.*”<sup>1</sup>

<sup>1</sup> Decretal. Greg. III. Tit. 49. c. 6.

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## CHAPTER IV.

## OF THE CATHOLIC CHURCH.

WHEREAS the Canon Law comes down to us as the written record of the discipline of the Catholic Church, its present we must at the outset try to ascertain the divisions. meaning of the term ‘Catholic Church.’ We find it not in Scripture; but it came into use in the earliest age of Christianity to distinguish the main Body of believers, adhering to the Apostles’ doctrine and fellowship,<sup>1</sup> from the *heretics* or those who *chose* to strike out new paths for themselves, as was done more and more. When therefore we at present apply the term ‘Catholic’ to any Body of professing Christians, we must do so to such an one only as, “maintaining *the Faith*, violateth not *the unity* of the primitive Church.”<sup>2</sup> That Faith is authentically expressed in the Nicene Creed: that Unity is maintained, wheresover are found Bishops ruling churches in unbroken succession from the primitive Church. We appeal to ‘the primitive Church,’ meaning thereby that of the first five or six centuries; because that period confessedly embraces the golden Age of Christendom, when its faith was most vigorous, its work most fruitful, its unity yet unbroken. But now we find it split up into fragments greater or less; and some are driven to devise new meanings for old terms become unintelligible.

1. We meet with the immense Communion in visible subjection to the See of Rome. And another almost equally large Communion attached to the Eastern Patriarchs, commonly known as ‘the Greek Church,’ including the church of the mighty Russian empire, independent of Rome and on some points opposed to her, but mostly symbolizing with her as against Protestants. These two great Communions, though they cling to “many

<sup>1</sup> Acts II. 46.

<sup>2</sup> Thorndike, Vol. V. p. 398, ed. Oxford.

inventions," which we consider noxious, still maintain every jot of the Nicene Faith, and certainly keep up the unity of Episcopal Government. *Their* claim to the title of 'Catholic' churches cannot be denied. Indeed, were a disciple of the Reformation disposed to deny it on the ground of the serious nature of their errors, he is met by the fact that we of the Church of England have ever admitted their orders and standing as churches.

2. For the Anglican Church; though sprung from the Roman, she reasonably claims that having long ago arrived at maturity she has and had the right to order her own household without the perpetual interference of an imperious parent. That the separation from that parent "hath come to pass by the rigour of the Church of Rome excommunicating those that reform themselves without her leave."<sup>1</sup> That reformation of the Church had been long called for, and the primitive Church all along set up by common consent as the standard of Reformation. This she appeals to in her Prayer book and Ordinal; this is 'the holy Rule of Reformation,' which her Convocations profess; save where she assumes violations of this Rule, she declares it never was her intention to forsake the rest of the Western Church. Whosoever therefore asserts, that the Church of England hath wilfully separated from that of Rome, shall charge her with wilful schism. For seeing she grants that Rome is "a true Church, though corrupted, how should it not be schism to profess separation from a true Church, when God hath tied all Churches to communion with all Churches?"<sup>2</sup>

Receiving then the three Creeds of the primitive Church, (albeit in the retention of the *Filioque* clause in that of Nicaea she inherits, and *shares with Rome*, a *breach of faith with the Eastern Church*;) admitting, by State-law of I. Elizabeth c. i. § 36, that the first four Councils interpreting Holy Scripture are the test of heresy; retain-

<sup>1</sup> Thorndike, V. p. 396.

<sup>2</sup> Ibid.

ing the Apostolic succession of her Ministry, she claims the title of ‘Catholic.’ If she seems to countenance heresy by ambiguous statements or omissions; if some of her sons admit teaching opposed to the One Baptism and the One Church of primitive times; the fault is balanced by the disregard or ignorance of Holy Scripture and by pagan traditions to be noted on the other sides.

3. For the so-called *Nestorian* Church of Assyria, the *Eutychian* Church of Armenia, the *Monophysite* Churches of Syria, Egypt, and Abyssinia; although they retain the liturgies and outward frame of ancient Catholicity, they “cannot be included within the Catholic Church, without reserving a liberty to exclude them, whensoever in point of faith it shall appear that they own the heresies” commonly ascribed to them.

4. For the so-called *Lutheran* Church of Sweden; if indeed they sincerely accept the Nicene Faith, and are linked by valid Orders to the unity of the primitive Church, the same has not been clearly established.

5. For the small Moravian Community, even if it possesses Episcopacy, it has existed and does exist after the fashion of a provisional arrangement, betraying little sympathy with the traditions of historic Christianity.

6. For the Protestant Bodies on the Continent and in Scotland, claiming the position of National Churches; if their loss of Episcopacy and utter indifference to, or rejection of, it as a link with the primitive Church may be excused on the plea of *an original necessity*, their unwillingness to abide by the standard of the Nicene Creed, and ready encouragement of violations of Catholic tradition, afford strong presumptions against their possession of the corporate life of Catholicity. At the same time, so far as they partake of the One Baptism and adhere to a standard of Dogma, they possess strong liens on the old Estate. While hesitating to admit their full title, we may yet applaud the services rendered to the

<sup>1</sup> Thorndike, V. p. 398.

study of Scripture by German scholars ; the missionary zeal of the Moravians ; the inflexible, if narrow, faith of the Presbyterian churches of Scotland ; the condemnation of a tepid Erastianism taught us by separated Bodies in England, whose schism we yet cannot condone where it wilfully violates the landmarks of ancient orthodoxy.

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## CHAPTER V.

### OF THE MYSTICAL CHURCH, OR KINGDOM OF GOD.

A LATE writer finds “the real solution of questions of Church and State” in our Lord’s words, “My kingdom is not of this world”;<sup>1</sup> and infers from them that that Kingdom “does not come into collision with politics or knowledge,” and “has nothing to do with Roman government or Jewish priesthood or corresponding institutions in the present day.” If this inference be quite correct,—if the principle our Lord enunciated be “a counsel of perfection,”<sup>2</sup> not a rule of life in general,—if it dwells “in the heart of man,” and is not of necessity to be expressed in outward action,—then Dioclesian committed a blunder, and the Martyrs suffered to no purpose, failing to draw Hobbes’s conclusion on the subject. But, provided it be not denied that Christ’s Kingdom is, after all, a visible society set up on earth, but which has relations established with Eternity, then we must grant his postulate, that its determining principle is a spiritual and moral one. When our Lord declared that His Kingdom was not of the secular order such as alone could provoke Cæsar’s jealousy, He did not imply it was the less ‘a kingdom,’ an organised society. It had officers and subjects; “if my kingdom were of this world, then would my servants fight, that I should not be delivered to the Jews.” The visibility of His kingdom is established by the injunction

<sup>1</sup> S. John XVIII. 36.

<sup>2</sup> Essays and Reviews, p. 358.

to "teach all nations, *baptizing them*,"<sup>1</sup> and by the words that connect baptism with 'entering the kingdom of God.'<sup>2</sup> If the kingdom be resolved into a principle dwelling in the heart, and nought besides, the outward baptism is unmeaning. Yet we are warned not to lay the chief stress on the outward sign by the words, "That which is born of the Spirit is spirit."<sup>3</sup> Again, He clearly expresses the visibility of His kingdom, saying, "And I appoint unto you a kingdom, . . . that ye may eat and drink at my table in my kingdom, and sit on thrones."<sup>4</sup> Yet S. Paul warns us that "the kingdom of God is not meat and drink," not a thing at the disposal of hierarchies, or a mere rosary of sacraments divorced from faith, "but righteousness and peace and joy in the Holy Ghost."<sup>5</sup>

Whilst, therefore, we assert the visibility of the Catholic Church, (with which aspect of the Truth alone the Canon Law is concerned,) we may not confine the mystical Church or Kingdom of God simply to the outward manifestations of it already dealt with. To guard against misconceptions, I further observe that the Church is treated in Scripture as the people "elect according to the foreknowledge of God," and that it embraces "sheep that are not of this fold," as human knowledge reckons. When our Lord taught us to pray, "Thy kingdom come," He meant not merely the visible Church, sometimes stiffening into an iron despotism under the rule of such a Pope as Innocent IV., who turned a deaf ear to proposals to purge the temple of money-changers; sometimes dissolving into a jarring discord of National Churches; He prayed not for the advent of a kingdom that should reproduce only too faithfully the arrogant claims of blind guides or the flexible consciences of Herodians,—for one that can be geographically meted out, or straitened by syllogistic reasonings imposed at will as articles of the Faith under pain of Anathema. He prayed for a king-

<sup>1</sup> S. Matt. XXVIII. 19.

<sup>2</sup> S. John III. 5.

<sup>3</sup> Ibid. v. 6.

<sup>4</sup> S. Luke XXII. 29, 30.

<sup>5</sup> Romans XIV. 17.

dom “flesh and blood cannot inherit.”<sup>1</sup> It is present, for He, “Who hath delivered us from the power of darkness, hath translated us into this kingdom”;<sup>2</sup> it is future, for even Paul looks forward to the “heavenly kingdom.”<sup>3</sup> Its Founder is the Eternal Father. Its Lord is Christ, who “must reign till he shall have delivered the kingdom to God even the Father.”<sup>4</sup> His Vicar is the Holy Ghost. His subjects are the men the Father gave the Son out of the world.<sup>5</sup> And, while we presume not to fathom the deep things of God, we may gladly cherish the hope that stirs in the words, “But in every nation he that feareth Him, and worketh righteousness, is accepted with Him.”<sup>6</sup>

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## CHAPTER VI.

### OF NATIONAL CHURCHES.

BEFORE we venture to draw inferences from the idea of the Catholic Church, as already stated, we must needs notice the modern doctrine of the nature of its component parts viewed as *National Churches*. We may allow the assertion that “the Apostolic Churches early tended to become National Churches”:<sup>7</sup> “that a National Church need not, historically speaking, be Christian”:<sup>8</sup> and even that “Heathendom had its National Churches.”<sup>9</sup> For the Jewish people were at once a Church and a Civil Polity in one. The early Aryas of India, before *castes* were developed, were not very far removed from the religion of the Patriarchs. They “peradventure erred, seeking God, and desirous to find him.”<sup>10</sup> One of the Vedic poets (Casyapa) expresses intuitions of a future life with glowing fervour. Another (the sublime Dirghatamas) approaches

<sup>1</sup> I. Cor. XV. 50.

<sup>2</sup> Col. I. 13.

<sup>3</sup> II. Tim. IV. 18.

<sup>4</sup> I. Cor. XV. 24, 25.

<sup>5</sup> S. John XVII. 6.

<sup>6</sup> Acts X. 35.

<sup>7</sup> Essays and Reviews, p. 165.

<sup>8</sup> Ibid. p. 173.

<sup>9</sup> Ibid. p. 169.

<sup>10</sup> Wisdom XIII. 6.

Isaiah in grandeur, while betraying a spirit overborne by the magical illusions of physical Nature. May we not apply to such men the sacred words, "Thou wast a God that forgavest them, though thou tookest vengeance of their inventions"? <sup>1</sup> The system of Bhudda (Sakya Muni) goes beyond a tradition of Theism. It anticipates the ethics of the Gospel; and constrains us to think that, while God appealed to all His creatures alike through the bounties of Nature,<sup>2</sup> He spoke to the nobler races of mankind through a Bhudda or a Socrates.

But while partial messages were allowed to quicken and reform particular nations, the Gospel of Christ was at the outset a Catholic revelation addressed to mankind, bringing 'peace to men of good will.' When the dawn ripened, the stars were to merge in the sunlight of the Incarnate Word. The Gospel claims to influence humanity. The imperfect or false religions only influenced certain races. But the question occurs, Could the principle of Nationalism, resting on distinction of races, fail to influence Christians, when the Gospel became the profession, not of small sections, but of nations? I answer, it could not. The vastness of the Roman empire at first veils the fact. But as soon as it is split in twain, the East and West presently exhibit ever widening divergences of Church life. Even now the genius of the Asiatic East, "leaning to the mysterious,"<sup>3</sup> fixed and rigid in its forms, is visible in the Greco-Russian Church. 'The phantom of the old Roman empire' has been discerned in the Papacy; the instincts of Law and Domination are the birthright of the Roman Church. And Protestantism—what is it but the embodiment of that temper of "the Western nations, always tempted to make reason not only supreme, but despotic, and disliking to acknowledge mysteries even in religion"?<sup>4</sup> That the Catholic Church should assume the form of National Churches

<sup>1</sup> Psalm XCIX. 8.

<sup>3</sup> Essays and Reviews, p. 19.

<sup>2</sup> Acts XIV. 17.

<sup>4</sup> Ibid.

more or less independent, was inevitable, when the mould of Imperial Unity was once shattered. That such partial independency should proceed to the assertion of absolute and inherent right, is *a vicious extreme*, repugnant to the notion of One Catholic Church. Losing sight of the principles which governed its original Founders, men learn to regard the Church of England as a function or “organ of the National life.”<sup>1</sup> Its merit is stated to be, that it be defined “by its own nationality,” not by its Catholicity; that it is “a whole,” not “a part”; that it should claim authority originally as a function of the National Life, not “*derive authority*” from the Catholic Church.<sup>2</sup> While the *fixedness* of dogma in the Church is regretted, when set beside the comparative *fluidity* of belief in the first century,<sup>3</sup> it is overlooked, how that once the Truth is formulated, it cannot be reduced into its pristine state of solution with impunity; and that the attempt would surely “provoke the individualist element (in the Church) into separation.”<sup>4</sup> An acquiescence in the results of Nationalism to the extent of banishing the unwelcome idea of the dependence of parts on the Whole appears to the minds of our Statesmen allied with *Patriotism*. The foremost of them has recorded his contentment in ‘the Anglican paddock,’<sup>5</sup> a Goshen hemmed in by the stern grandeur of unrelenting Rome and the shifting sands of the Desert of Free Thought; another treats the Church as a mere fringe of National Life, and not obscurely hints that Western Christendom has but usurped the purer title of a Nazarene sect in Galilee.<sup>6</sup> The one has at least sought to establish the right of the National Church to some spiritual freedom; the other has actually succeeded in subjecting it to a creature of Parliament. Neither of them has shown how a Body at the disposal of the Civil Power can main-

<sup>1</sup> Essays and Reviews, p. 190.   <sup>2</sup> Ib. p. 174.

<sup>3</sup> Ib. pp. 166, 174, 194.

<sup>4</sup> Ib. p. 173.

<sup>5</sup> Gladstone, ‘Vaticanism.’

<sup>6</sup> Disraeli, ‘Lothair,’ Vol. III. ch. XVII.

tain the loyalty it owes in theory to the Catholic Church. The problem of ‘a Free Church in a Free State’ remains unsolved. Who shall teach us how to reconcile national and patriotic instincts with the demands made or reserved by a Church claiming to guard and interpret the Oracles of God? If the balance inclines to the latter, we have the antagonism always deplored by the Pope, whose bark of S. Peter is ever assailed by the billows. If to the former, we have the Church the obsequious handmaid of the State, whose claims to Divine Authority provoke a sigh or a smile. May we not marvel when it is gravely complained that a National Church so circumstanced “estranges her practical administration from the influence of a Protestant laity”?<sup>1</sup>

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## CHAPTER VII.

### THAT THE VOICE OF THE CATHOLIC CHURCH CONCLUDES THE CONSENT OF NATIONAL CHURCHES.

§ 1. To every man conversant with Scripture and ancient Authors it is evident, that the decrees of the whole Church bind and conclude the consent of particular churches. For we find S. Paul delivering to the cities of Asia “the decrees for to keep, that were ordained of the apostles and elders that were at Jerusalem.”<sup>2</sup> And the unity of the whole Church was maintained till the time of Constantine by the frequent correspondence and interchange of letters of communion among the bishops throughout the Roman empire.

I grant that the occasions of exhibiting the visible unity of the Catholic Church by means of *General Councils* must be rare and out of ordinary rule; though it is idle

<sup>1</sup> Essays and Reviews, p. 91.

<sup>2</sup> Acts XVI. 4.

to tell us they were “the invention of Constantine.”<sup>1</sup> Nor can they be easily summoned, where the facilities afforded by the unity of the Roman empire are wanting. But it must not be forgotten that the interchange of decrees of particular Councils, aided by the development of the Patriarchal hierarchy, to a great extent answered the same purpose. If, as Barrow holds, the latter serve only to mark the *utility* of neighbouring bishops “conspiring to promote truth and order,” I see not why we should reject the Independents’ theory, nor on what ground of authority the Anglican synods claim to conclude the consent of the Church of England. If the Convocation of Canterbury insists that it is ‘the Church of England by representation,’ then is a General Council equally ‘the Catholic Church by representation’; and consequently hath the power of concluding the consent of the Body it represents. It is a saddening reflection that the broken unity of the visible Church should be turned into an argument against its being One Body, at least *in point of right*, if we are forced to yield that *in point of fact* it is so no longer. Or, because re-union of the Church is so hopeless, that we should not strive after the means of recovery in order to preserve what little of Christianity remains. The constant appeal to a free General Council, so often advanced at the period of the Reformation, proves that men had not then grown hardy enough to disown the obligation of particular Churches to the conclusions of the Catholic Church. Whether the communion of the whole Church be maintained by a hierarchy of Patriarchs, or by action of Councils, or by correspondence of Bishops in union with their Synods, the Church at large becomes “a standing synod, able by consent of the chief Churches, to conclude the whole.”<sup>2</sup>

## § 2. The Oath of Supremacy, by reason of its sweep-

<sup>1</sup> Barrow, Discourse of Unity.

<sup>2</sup> Thorndike, Just Weights, &c. ch. VI. § 8.

ing terms “that no *foreign* prelate ought to have jurisdiction within this realm,” although intended to shut out Papal usurpations, is yet open to misconstruction; not only because those usurpations were (for aught can be proved to the contrary) annexed to the Imperial Crown of England; but also, and chiefly, because “not only the unlimited power of the Pope, but all authority of a General Council of the Western Churches, (whereof the Pope is and ought to be the chief member,) may justly seem to be disclaimed by . . . the same Oath.”<sup>1</sup> “For it were a contradiction, for the Church of England to pray for the Catholic Church and the unity thereof, and yet renounce the jurisdiction of the whole Church and the general council thereof over itself.”<sup>2</sup> It follows that, if the Pope were content with that right of supervision in the maintenance of Church Law, (as claimed by Gregory the Great,) we should be bound to allow him a certain jurisdiction (*not coercive*) within this realm, if we would not nullify our profession of submission to the Catholic Church. I think however that the precedent set by the Greek and Russian Churches in extorting independence of the See of Constantinople would be followed by the English in debarring all Patriarchal rights claimed by Rome. But the Bishop of Rome would be still entitled to the Primacy of honour and the Apostolical supervision allowed him in the primitive Church.

§ 3. Meanwhile the Canon Law is a standing monument of the paramount authority of the Catholic Church; and, although it binds us not in many particulars, it is “derived from those rules, whereby the Apostles and their successors governed the primitive Church in unity.”<sup>3</sup> Even the Erastian Selden acknowledges, that those Papal “decrees that bred much of what now justly continues in some States, remain

The Canon  
Law a per-  
manent  
memorial.

<sup>1</sup> Thorndike, *Just Weights, &c.* ch. XX. § 2.

<sup>2</sup> *Ibid.* Vol. v. p. 29.

<sup>3</sup> *Ibid.* ch. v. § 3.

most observable."<sup>1</sup> In default of canonical studies, the efforts of our Synods must remain crude and empirical, and express intuitions rather than scientific conclusions.

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## CHAPTER VIII.

### THAT THE VOICE OF THE CATHOLIC CHURCH FINDS EXPRESSION IN GENERAL COUNCILS.

**§ 1.** THE Council of Basil maintained that General Councils, representing the whole Catholic Church, held immediately of Jesus Christ ; and consequently that the Pope and also all Christians were bound to submit to them in matters concerning faith and morals.<sup>2</sup> This agrees with Pope Siricius's language in A.D. 386 ; "It becomes us not to judge as if of synodal authority."<sup>3</sup> And in A.D. 551, not a General Council, but the bishops of Africa synodically excluded from Catholic communion Pope Vigilius for condemning the Three Chapters.<sup>4</sup> If any one scruples to admit the authority of the Council of Basil, let him know that the above doctrine was broached in its *fifth* session ; and that its opponents, (including Bellarmin,) admit the oecumenic and legitimate character of the Council at least until its *tenth* session.<sup>5</sup>

**§ 2.** The doctrine of the Council is now rejected by Pope as well as Protestants. The Pope has proclaimed or accepted his own Infallibility. The Anglicans say that "General Councils have erred," and therefore "may err," in doctrine as in discipline. They omit to say *who is entitled to rule that they have erred*. But all seem to admit that in fact the first *four* General

<sup>1</sup> De Synedriis, p. 477.

<sup>2</sup> Fleury, Hist. Ecclés. L. CVI. c. 24.

<sup>3</sup> Epist. ad Anysium, Labbe II. 1033.

<sup>4</sup> Victor Tunnunensis, Chron. p. 10.

<sup>5</sup> Fleury, ubi supra, L. CVI. c. 85.

Councils did not err; which is a presumption in favour of the inerrancy of all *real* General Councils. Where the Church of England declares that such “may not be gathered together without the commandment and will of Princes,”<sup>1</sup> it is to be understood as expressing a *fact*, not a law of the Catholic Church.

§ 3. The holding of Councils, whether summoned by the Sovereign or not, though not absolutely necessary when grave hindrances exist, is of Divine right, Such expression is when the interests of the Church plainly require abnormal. it.<sup>2</sup> But they are to be regarded only as extraordinary remedies in presence of great evils, not as a normal function of the Church’s life.

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## CHAPTER IX.

### OF THE INERRANCY OF GENERAL COUNCILS.

§ 1. WHEN it is said that General Councils “may err, and sometimes have erred, even in things pertaining to What ‘in- God,” and that on the ground that “all” mem- errancy’’’ers composing them “be not governed by the implies. Spirit and Word of God”;<sup>3</sup> it seems this is to be understood *antecedently* and *universally* of all Ministries appointed by our Lord, *consequently* of all assemblies claiming to represent them. If S. Peter was ‘to blame’ on occasion, so also are his inferiors. A Catholic may well blush to find lay Imperial Commissioners keeping *order* at Chalcedon in this fashion; “Vulgar clamours neither become bishops, nor will benefit their side. Allow then the whole to be read.”<sup>4</sup> But no Council is reputed ‘General’ merely for its numbers, nor for the intention of those who summon it. Its decrees must be universally received, that is, they must reflect the mind and conscience of the Church

<sup>1</sup> Article XXI.

<sup>2</sup> Article XXI.

<sup>3</sup> Thorndike, Vol. I. p. 537.

<sup>4</sup> Labbei Concilia, T. III. p. 104.

generally and be held to do so, before they be justly entitled to oecumenical authority. “The reception by universal consent” is assigned by S. Gregory the Great as the ground of authority claimed for the first four General Councils.<sup>1</sup> But when these conditions are fulfilled, it seems hazardous to admit that in things necessary to salvation God should permit the gates of hell to prevail against His Church. And here I fail to perceive the worth of Thorndike’s argument against Hobbes, namely, that we must reject the notion of some Inerrancy or Infallibility residing in the Church, “unless we will say that God hath tied Himself to preserve it free from the trial of heresies, &c.”<sup>2</sup> For Inerrancy implies not *immunity* from trial, but *victory* over the same. And Christ hath promised that the gates of hell shall, not indeed not *imperil*, but “not prevail against” the Church, which is founded on the impregnable rock of Faith in His Incarnate Godhead. Therefore, when we are bound to a supernatural doctrine in order to salvation, it cannot be that we should be so forsaken as to be deceived in things necessary. And this modest claim to Inerrancy in necessary points, such as guarding the substance of the Faith, must be asserted for the Church as her Saviour’s inalienable bequest to the end of the world. If Peter’s faith yielded to a temporary shock, his Lord had prayed for him, had secured his *conversion*, had ordained that his *faith* should ‘strengthen’ his brethren. We appeal *a Petro titubante ad Petrum resipiscentem*. Nor should mistakes committed, but afterwards corrected, by a General Council serve to destroy its credit on the ground that *all* its members be not governed by the Spirit and Word of God, any more than the like be held to ruin the credit of the holy Catholic Church. S. Augustine himself scruples not to admit, that “General Councils are often amended, the former by the later”; while, “subterfuges

<sup>1</sup> See my “Sanctorale Catholicum,” p. 137.

<sup>2</sup> Review of Right of the Church, § 31.

set aside, provincial Councils should yield to the authority of General Councils.”<sup>1</sup>

§ 2. A modern bishop, who might be supposed little likely to share the sentiments here expressed, allows them in substance when he says: “That the decisions of the Church were right, on the whole,—that is, that they always embodied, if they did not always rightly define, the truth—is proved by” her “permanent vitality as compared with the various heretical bodies.”<sup>2</sup> Nor is the force of this admission impaired by what he adds, to wit, that *all* the “logical statements” sanctioned by her need not be held to prescribe “for all succeeding time.”<sup>3</sup>

Another writer grants that “*a sound instinct* prevented the Church from dividing the humanity and Divinity of Christ”; and that “a different decision by the Council of Nicaea would have been a greater *misfortune*” than the one actually arrived at.<sup>4</sup> In effect, if we take these writers’ words at their best, they support Cardinal Newman’s thesis, that “a divine superintendence and immunity from error is the gift of the Catholic Church.”<sup>5</sup>

## CHAPTER X.

### OF NATIONAL OR PROVINCIAL COUNCILS.

§ 1. NATIONAL Councils should not be summoned save by the Sovereign (if in communion with the Church,) and only on extraordinary occasions. Provincial Councils are enjoined by the Nicene canons to meet twice a year;<sup>6</sup> not for vague discussion, but for the despatch of urgent business. So

<sup>1</sup> De Baptismo contra Donatistas, lib. ii. c. 3.

<sup>2</sup> Essays and Reviews, p. 41.

<sup>3</sup> Ibid.

<sup>4</sup> Ib. p. 420. It was ‘an eminent English prelate,’ who employed these strong terms.

<sup>5</sup> Note in Palmer’s ‘Visit to the Russian Church,’ p. 568.

<sup>6</sup> Canon 5.

far from avoiding ‘burning questions,’ we find the Nicene Synod dealing with great controversies raised by schismatics, such as the Novatianists and the Paulianists.<sup>1</sup> In case a bishop held himself injured by the decision of a Provincial Council, the Synod of Sardica, “to honour the memory of S. Peter,” gave the Bishop of Rome power to confirm their decision, or to appoint new judges.

§ 2. Although such Councils have not the power of constituting, yet have they that of enjoining obedience to what is elsewhere generally ordered to be observed.<sup>2</sup> Reiffenstuel, however, states that particular Councils, whether National or Provincial or Diocesan, may make new constitutions having the force of law; nevertheless these bind only their own people within the limits of their own territory.<sup>3</sup>

§ 3. Such was the aim of the Church of England in those later constitutions, which have in effect separated her from the concert of the Churches of the West. She, however, in Preface to the Prayer-book, saith expressly; “In these our doings we condemn no other nations, nor prescribe anything but to our own people only.” She by canon disclaims any intention of separating from them, (naming France, Spain, Italy, Germany, in a word, the Roman Obedience,) save in matters wherein (she professes) they have departed from “the integrity of their first Founders.” But of the *fact* of such departure she apparently constitutes herself the judge. Now no one can reasonably be judge in a case where he himself is vitally concerned. The strength of her plea seems to lie herein, that most of the changes she effected were long called for in some shape, seeing that the Western Church had been ringing with demands for Reformation in the Church, in its Head (the Pope) and in its members. She too had passed for something, and was taken to be “a noble portion of the universal Church”

<sup>1</sup> Canons 8, 19.

<sup>2</sup> Decret. I. Dist. 18.

<sup>3</sup> I. p. 78.

when as yet in her youthful days.<sup>1</sup> The Roman contention insists, that it was *ultra vires* for a National or Provincial Synod to re-cast the Liturgy and Common Order of the Church, and to upset a settlement acquiesced in for so many centuries. Clearly then the resolution of the question is put off to a day when all parties concerned must submit to the re-handling of foregone conclusions. The case of S. Cyprian's Councils, wherein we see the influence of a powerful mind carrying all before it, and leading a whole Church into wrong conclusions,<sup>2</sup> (for his compatriots merely echo his vigorous speech,) warns us of the danger attending isolated action. The annihilation of episcopal authority by the absorbing centralization of Rome, its abeyance among ourselves in face of an encroaching Civil Power, mark the woes that await them by whom offences do come. And now, when we uphold the act of our forefathers in revising a settlement of over a thousand years, dare we be confident that their work shall abide final and irrevocable? Reforms, even when necessary, have the gift of evoking successors out of the womb of Time.

## CHAPTER XI.

### OF CUSTOM.

Custom      § 1. HUMAN laws fail in certain cases; whence one may  
abrogates      act beside law, and yet not act wrongly; and when such  
Law.      cases grow numerous, then custom shows that  
                    the law is no longer useful; as also would be  
                    indicated by a law of contrary tenor. But if  
the reason which called for the law remains, then law  
overcomes custom.<sup>3</sup> As also, when the law forbids the

<sup>1</sup> King Edward II. to the Pope, July 20, 1311, *ap.* Rymer's Foedera.

<sup>2</sup> E.g. the rejection of baptism by heretics.

<sup>3</sup> Archidiaconus Bononiensis (Guido De Baiis) super Decret. fol. 13.

introduction of custom, or when the custom has crept in through error.<sup>1</sup> Contrariwise the conservative Byzantine Balsamon : "Long unwritten custom is of no force, when it is opposed to written law or canon."<sup>2</sup> And S. Augustine says, "When laws have been established, it is not the judge's business to decide concerning them, but in accordance with them."<sup>3</sup>

§ 2. To examine why Custom avails against canons, but not against statute; and why secular persons have Custom, been allowed to limit Imperial law, while when ecclesiastics are not to prescribe against canons, available? is a nice investigation. The reason may have been, because the Civil Law tends to the advantage of individuals as well as the public good. But the Canon Law aims rather at the public good of the Church. Whence for inferiors to limit canons is presumed rash and contrary to the eternal end of Church legislation. Custom is tolerated, because it proceeds from tacit consent; and because greater scandal ensues from its reprobation, when tacit consent for a long period concurs with it.<sup>4</sup> It is asked, How long a time is required to induce Custom? Is it ten years, which lawyers regard as "a long time," or time immemorial? Panormitan replies: "Either Custom is beside Law, and then ten years suffice. Or it is *against* Canon Law, and then a period of forty years is required. When Custom traverses those things that have been reserved for the Sovereign by way of special privilege, then time immemorial is required by both Laws."<sup>5</sup> If a custom be incomplete and meets with interruption, the allowance of acts adverse to it shows a tacit consent of the people to induce a new one. If it be complete, a single act to the contrary doth not do away with it; but it must be abrogated in the same way as it was introduced. For it is now law,

<sup>1</sup> Innocentius super Decret. fol. 15.

<sup>2</sup> Beveregii Synodicon, I. 357. <sup>3</sup> De Vera Religione, cap. 31.

<sup>4</sup> Panormitan, T. I. f. 105. Decret. Greg. L. I. Tit. iv. c. 11.

<sup>5</sup> Ibid. Founded on a decision of Innocent III. *in re* Bishop of Worcester v. Abbat of Evesham.

and therefore ought to be abrogated as law. "I believe however," says Panormitan, "that a period of ten years suffices."<sup>1</sup>

**§ 3.** If a law enjoining something has never been observed, and the legislator knows of it, yet refrains to vindicate the law, such a law does not bind.  
 Laws fallen into desuetude do not bind the conscience. And it is thought that time is not required to induce prescription, but two or three acts to the contrary suffice to impede its obligation. But if some observe it and others in the same place do not, the latter seem inexcusable. If the superior be ignorant of the non-observance, then probably forty years' prescription is needed, provided the custom be reasonable.<sup>2</sup> Custom however cannot be induced from a negative act or from non-user; since Custom is Habit grounded on a repetition of acts. We cannot argue Custom where the law merely permits a thing without enjoining it. But if the non-user implies a tacit act against the disposition of the law, Custom is induced.<sup>3</sup> Enactments not received into common usage do not argue those that do not observe them guilty of transgression.<sup>4</sup>

**§ 4.** The lapse of time necessary to induce Custom is not required to abrogate Desuetude, that is, Custom opposed to Law. If a law has not been observed for some time, it is not therefore judged to be entirely annulled; so that if *the community* afterwards changes its mind, and begins to observe the law generally, it also begins to be bound thereby without further legislation.<sup>5</sup>

If then laws not originally put in force be after a lapse of time appealed to as binding on the conscience, it seems that such a contention cannot be sustained; unless, not individuals only, but 'the community' comes to accept them as so binding. Otherwise, why do we find canons

<sup>1</sup> T. I. f. 106.

<sup>2</sup> T. II. f. 131.

<sup>3</sup> T. VI. f. 16.

<sup>4</sup> Decret. I. Dist. 4.

<sup>5</sup> Reiffenstuel, I. 203. He cites Navarrus and Suarez.

even of General Councils called up and sanctioned anew by provincial or diocesan Synods? But as the action of a community is generally anticipated by that of portions thereof or even by individuals, we ask, Under what conditions may a law fallen into desuetude or never acted on, yet never formally abrogated, be called into life by individuals? Clearly, when *the reason is not ceased whereon it was originally prescribed.*<sup>1</sup> And, moreover, seeing that the edification of the Church depends upon *Order*, and that the arbitrary action of individuals would leave the Church obnoxious to perpetual confusion, they should seriously weigh whether the advantage accruing from obedience to a dormant Law countervails the disadvantage of public confusion, which they may cause by departure from Custom. The unnecessary disturbance of men's minds by the introduction of superfluous ceremonies is pointed at by the Council of Elvira, which forbade the lighting of tapers by day in the cemeteries on that very ground.<sup>2</sup> "The common order of the Church," insisted on in our Article XXXIV., is put forward by the Council of Nice as a prime reason for compliance with a ceremony, that "all things be observed alike in every *parish*" (or diocese).<sup>3</sup> If that 'common order' in one case demands compliance, it may in another justify forbearance. But the lapse of time, during which a law has lain dormant, while it furnishes presumption of desuetude, and weakens the plea of conscience as to its observance, does not absolutely destroy that plea.

<sup>1</sup> Thorndike, Of the Service of God, &c. ch. VI.

<sup>2</sup> Canon 34: "ne inquietentur spiritus fidelium."

<sup>3</sup> Canon 20,

## CHAPTER XII.

## OF JURISDICTION IN GENERAL.

§ 1. JURISDICTION is the public power of saying or declaring the law, followed by execution. It is a *power*, Not taken in a strict sense. not simply authority, such as that of parents, for example. Although the term be proper only where there is physical power to constrain ; yet the exercise of that moral power, which causes the rules whereby the society of the Church stands to be obeyed, is called ‘Jurisdiction,’ albeit in an imperfect sense.

§ 2. Taking the term then, in a large sense, to signify the power of declaring the will of God in the government of His Church, we find that Christ conferred this power, which He called “the keys of the kingdom of heaven” on all the Apostles, saying, “Receive ye the Holy Ghost ; whose soever sins ye remit they shall be remitted to them.”

As lodged  
in the  
Apostles  
and the  
Universal  
Church. This power He confirmed by the sending of the Holy Ghost. Hence it was gathered, that, as it was given to all the Apostles representing the whole Church, and thrice solemnly given to S. Peter as their chief or leader, it now is in possession of the Church universal ; but ought to be expounded by the Pope as its Head.<sup>1</sup> Nor is this view foreign to the judgment even of some Protestant divines, who regard the decrees of a General Council, expressed by the Bishop of Rome as its Chief, as the most august and solemn exposition of the mind of the Catholic Church.<sup>2</sup>

<sup>1</sup> Panorm. T. I. f. 19.

<sup>2</sup> Some prejudice of early training clings to us all. When the candid Fleury notices the first Apostolic Council of Jerusalem, recorded in Acts ch. XV., he says, “S. Peter presides in the assembly ; he *opens* it, he proposes the question, and *is the first to say his mind*” (Hist. Ecclés. L. I. c. 34). But in S. Cyprian’s case he writes : “S. Cyprian *as President* says his mind *the last*” (L. VII. c. 29). And when Cyprian reprobates the conduct of Pope Stephen, saying in a letter to Jubaianus, “None of us makes himself a *bishop of bishops*, forcing his colleagues to obey him *by a*

## CHAPTER XIII.

## OF COERCIVE JURISDICTION.

Jurisdiction, in the view of the Canon Law, generally means *coercive jurisdiction* : “for it would seem to be of no moment, if it had not some coercive power.”<sup>1</sup> This Papal utterance conveys the exact truth of the matter in cases touching property, &c. Even under a heathen emperor (Aurelian) the Church of Syria had to call in the aid of the Civil Power in order to oust a condemned heretic (Paul of Samosata) out of possession of the temporalities of his see. For the Church, as a spiritual society, had no temporal means to enforce its censures. Before Princes were converted to the faith, obedience was rendered by the voluntary consent of Christians. Whatever the Church ordered under such circumstances was an attempt on the laws of the State : all causes belonging to God’s worship and the discipline of the Church being ordered in violation of the said laws. But when Princes became obedient to the faith, they deemed it their duty to provide for the public and coercive execution of the laws of Religion, and “to restrain with the civil sword the stubborn and the evildoers.”

§ 2. It follows that the penal exercise of discipline, whether in excommunication or in the dispensation of the

Word and Sacraments, is derived from the concession of Princes ;<sup>2</sup> in England, from the Imperial Crown of the realm. The matter, indeed, of ecclesiastical laws is, and ought to be, determinable by the Church ; for, as the Civil Law hath it,<sup>3</sup> civil judges should not participate in the examination of

*tyrannical terror* ; Fleury drily comments thus : “S. Cyprian marks Pope Stephen by the words ‘bishop of bishops’” (*Ibid.*).

<sup>1</sup> I. Decret. Greg. L. I. Tit. xxix. c. 28. Innocent III. to the Bishop of Ely. <sup>2</sup> Fleury, Discours 7<sup>me</sup>. <sup>3</sup> Cod. Theodos. Auth. 123, c. xxi.

a (purely) church question, but it is reserved for the bishops to decide according to the canons; yet all force of binding men to obedience can only proceed from the State, within which a particular Church exists.<sup>1</sup>

§ 3. We may see the origin of coercive Jurisdiction, and its instrument Excommunication, followed by civil penalties, in the book of Ezra; when by the Its origin. direct injunction of the Civil Power judgment was to be executed speedily upon whosoever would not do the law of God, "whether it be unto death, or to banishment, or to confiscation of goods, or to imprisonment";<sup>2</sup> and where Ezra carried out the decree against the disobedient, that "all his substance should be forfeited, and himself separated from the congregation of those that had been carried away."<sup>3</sup> But although coercion in the legal sense did not attach to the jurisdiction exercised by the Apostles, we must not forget that they were armed with miraculous power to enforce their decrees: as is seen in the death following on S. Peter's denunciation of Ananias and Sapphira, the blindness inflicted by S. Paul on Elymas the sorcerer, his delivery of Hymenaeus and Alexander to Satan i.e. to demoniac possession for their physical chastisement. And the effect of Excommunication in the early Church, when the sentence of a single bishop was carried out by the harmonious action of the whole Church, must have been strictly coercive in a moral sense.

## CHAPTER XIV.

### ORIGIN OF THE EPISCOPAL HIERARCHY.

WHEN the Catholic Church became allied to the Roman empire, the simple arrangements which suited its period of obscurity had to give way to altered circumstances.

<sup>1</sup> Thorndike, Works, Vol. I. p. 554, ed. Oxford.

<sup>2</sup> Cap. VII. v. 26.

<sup>2</sup> C. X. v. 8.

It is evident from the act of the Council of Arles in seeking the confirmation of its decrees from the Bishop of Rome that his pre-eminent authority was already recognized in the West; and the General Council of Nicaea mentions *Metropolitans* as in existence before its convocation. The origin of this rank of eminence among bishops is clearly due to the fact of the earliest missionaries having first planted Christianity in the *mother-cities* or *metropoles*, whence it radiated slowly into the smaller cities; while the sparse hamlets or *pagi* were the last to surrender their heathen rite, from them termed *Paganism*. But for the distinctions of *Archbishop* and *Primate* or *Patriarch*, while Gratian will have them derived from the Gentile ranks of *Flamens* and *Arch-Flamens*,<sup>1</sup> later writers refer them to an imitation of the political hierarchy established by Constantine; for example, the four Praetorian Praefects of Italy, Illyricum, the Gauls, and the East, the *Augustal* Praefect of Egypt, and their subordinate *Vicars*. It is highly improbable that the Church adopted the fashion of the heathen priesthood. And although the next supposition is more plausible, in that the Patriarchs of Alexandria and Antioch do answer to the Praefects of Egypt and the East, leaving three of the Praefects to correspond with the Pope of Rome only; it fails to explain how the terms ‘Patriarch’ and ‘*Arch*-bishop’ came to be employed.

I think a passage of S. Epiphanius (*In Haeresi Ebionitarum*) throws light on the subject; where he makes the Christian bishops, priests, and deacons answer to the *archi-synagogi*, presbyters, and *Azanitae* of the Jewish synagogues. The Christians must have been naturally led to adopt Jewish habits, such as were not opposed to the Gospel, from the very fact of all the Apostles having been Jews. And as the constitution of the Church under bishops and presbyters was copied from the consistories of the synagogues; so the grouping of the Jews after their

<sup>1</sup> I. Dist. xxi.

dispersion under the supreme direction of ‘the Prince of the Captivity’ at Babylon (for the East) and of ‘the Patriarch’ of Tiberias (for the West,) and probably of the *Archi-synagogus* at Alexandria (for Egypt,) may have led the Church to designate her chiefs accordingly; especially as Christianity had under Apostolic guidance struck deepest roots at the three great centres of Rome, Alexandria, and Antioch. In connexion with this, I observe that the bishop of Antioch first assumed the style of *Patriarch*, and he of Alexandria that of *Archbishop*, following (I conceive) Jewish practice.

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## CHAPTER XV.

### OF PATRIARCHS AND PRIMATES.

§ 1. THE chief duty of a Patriarch is to see the canons of General Councils executed, and to hear appeals from Metropolitans where the custom obtains.

Of Patriarchs; their duties. There are but five *bond fide* Patriarchs, those of Rome, Constantinople, Alexandria, Antioch, and Jerusalem. Of these, the Patriarch of Alexandria enjoyed ampler authority than his brother of Antioch, who shared a portion of his powers with the Eastern Metropolitans.<sup>1</sup> The Archbishops of Bulgaria (*Justiniana Prima*,) Cyprus, and Iberia, were independent of Patriarchal control.<sup>2</sup> The style of *Patriarch* properly belonged to Antioch; that of *Pope* to Rome and Alexandria; that of *Archbishop* to Constantinople and Jerusalem.<sup>3</sup> By the development of the British empire the Archbishop of Canterbury has come to occupy virtually the position, without the title, of Patriarch. Count Pratasoff, the Imperial Commissioner in the Russian Governing Synod,

<sup>1</sup> Conc. C. Politan. I. can. 1-2; Fleury, Hist. Ecclés. L. XVIII. c. 7.

<sup>2</sup> Balsamon *apud* Bevereg. Synodic. T. I. p. 88.

<sup>3</sup> Fleury, H. Eccl. L. ix. c. 11.

“perceived that the Act of Parliament had made *a kind of Patriarch of our Archbishop of Canterbury.*”<sup>1</sup>

§ 2. In the Greek Church, the chief Metropolitans, who held sees corresponding with the capitals of the civil *dioceses* of the Roman empire, were styled Of lesser Patriarchs Exarchs, and enjoyed some portion of Patriarchal or Pri- dignity. Such were the bishops of Caesarea in Cappadocia, Ephesus, Heraclea in Thrace, Thessalonica, and Corinth.<sup>2</sup> On the establishment of the Patriarchate of Constantinople, they were styled *Proto-thrones*. In the West, the Patriarchs of Aquileia, Grado or Venice, and in late times those of Lisbon and the Indies (for Portugal and Spain) enjoyed similar privileges; as also the Primates of Pisa, Bourges, and Canterbury.

## CHAPTER XVI.

### OF THE PREROGATIVE OF THE POPE IN THE CATHOLIC CHURCH.

§ 1. THE Canon Law, when codified by Gratian and others, found the Bishop of Rome already accepted in the West, not only as the Successor of the Apostles Double source of Peter and Paul in the government of the the Pope's Church, but also inheriting their position as authority. divinely authorized Teachers of the Church and Guardians of the Faith. Once the minds of men were possessed of this notion, the expression of S. Irenaeus ‘potior principalitas’ (a superior pre-eminence) applied to Rome, and even Tertullian’s and Cyprian’s *taunt*, styling the Pope ‘bishop of bishops,’ only served to confirm their prepossession. Yet the most authentic and prescriptive Synod of all, the First of Nicaea, merely cites

<sup>1</sup> Palmer’s ‘Notes of Visit to the Russian Church,’ p. 181.

<sup>2</sup> Zonaras, *apud Bevereg. Synodic.* I. 135.

the precedent of the Roman bishop's authority over those of Italy as one to be followed in ruling the position of him of Alexandria in Egypt; and that of Constantinople expressly exalts the bishop of that see, because it was 'new Rome,' omitting all reference to the Primacy of S. Peter's Successor in the Church. The Council of Chalcedon says emphatically that the Fathers had granted the see of ancient Rome its privileges, "*because it was the Imperial city.*"<sup>1</sup> That of Sardica bestows the right of entertaining certain Appeals on the Roman Pontiff. And it was natural that when the emperor Theodosius took upon him to limit the application of the term 'Catholic' to orthodox Trinitarians, he should cite Damasus of Rome as a living exemplar; though he took care to couple with him Peter of Alexandria.<sup>2</sup>

Nevertheless this is not the only side of the case. Maugre the silence of canons, it remains that the veneration entertained for the Successor of Peter, and the growing tendency to connect the Lord's promise to Peter with the only bishop that stood forth visibly his inheritor, so wrought by degrees on the minds of men that a Byzantine historian, no prejudiced adherent of *Old Rome*, but a citizen of the *New*, and even a *Dissenter*, must write that it was *νόμος*—Law—that nothing should be done without the mind or judgment—*ἀνευ γνωμῆς*—of the Bishop of Rome.<sup>3</sup>

The double source of the Papal authority was yet recognized in the Middle Ages; for a weighty Canonist asserts, "The Pope hath jurisdiction from the Lord's command and from the authority of Councils."<sup>4</sup>

## § 2. The nature of his prerogative is clearly marked

<sup>1</sup> Canon 28.

<sup>2</sup> February 28; A.D. 380.

<sup>3</sup> The later Byzantines somewhat narrowly attribute the aggrandizement of Rome to the canon of Sardica: '*Ἐκ τούτου τοῦ κανόνος τὸ Πρωταῖκὸν ἥρται εἰς ἀλαζονεῖαν.*' (Fragmentum Amerbachianum.) It was confirmed by the emperor Gratian in A.D. 378, but with the alternative of appeal to fifteen neighbouring bishops in Italy (Labbe. T. II. f. 1005).

<sup>4</sup> Archidiaconus super Decreto, fol. 7.

Nature of his prerogative.

in the Rescript of Pope Innocent I. to the Council of Milevis in S. Augustine's lifetime; “*As often as a reason touching the Faith is ventilated, I think all our brethren and fellow-bishops ought to refer, as your Belovedness has now done, to none other save Peter, that is, the author of their name and dignity.*”<sup>1</sup> I mark, moreover, that the Fourth General Council distinctly styles Pope Leo I. their Head, when they solicit confirmation of their decrees; saying, “*We beseech you, then, honour our judgment with your suffrage, even as we have referred to our Head our accord in what is reasonable.*”<sup>2</sup> Bishop Temple, indeed, infers that “*in all the doctrinal disputes of the fourth and fifth centuries the decisive voice came from Rome, . . . because she alone possessed the art of framing formulas which could hold together*” the Church.<sup>3</sup> But I trace not her dominant influence in shaping the decisions of the Councils. S. Athanasius was the master-mind of the Nicene; S. Gregory Nazianzen and S. Meletius, of the Constantinopolitan; S. Cyril of Alexandria, of the Ephesine; Leo of Rome’s *Tome* fortified, rather than ruled, the decisions of Chalcedon. “*A head,*” he says, “*was wanted, and no better one could be found.*” True, but the key to the selection is to be found, not in the yielding of Oriental bishops to diplomatic influence, but in the motive avowed by the Council of Sardica, “*Let us honour the memory of S. Peter*”; and in the fact, that ‘the shadow of Peter’ was felt to rest on the Apostolic sees of Rome, Alexandria, and Antioch, *never* on the creations of Councils, the sees of Constantinople and Jerusalem.

<sup>1</sup> Labbe, Tom. II. fol. 1287.

<sup>2</sup> Ibid. T. IV. f. 838.

<sup>3</sup> Essays and Reviews, p. 16.

## CHAPTER XVII.

### HOW ANCIENT PRECEDENTS RESPECTING IT AFFECT BRITAIN.

§ 1. THE First Council of Arles A.D. 314 submits its canons to Pope Sylvester for his ratification. Not, it would seem, in his capacity as *Patriarch*. For the Roman Patriarchate only embraced the ten *suburbicary* Provinces immediately subject to the *Vicar of Rome*, as we learn from Ruffinus.<sup>1</sup>

Primacy of Rome early recognised.

The action of the Council can only be explained by its political dependence on Rome, (whereof not an inkling in the *Acta*;) or by their belief in the Primacy of S. Peter continued in some way in the Roman bishop, or by the derivation of their Christianity from Rome. The presence of three British bishops (of York, London, and perhaps Caerleon), and their subscription to the Acts of the Synod of Arles, disposes of the pretence of utter independence of the British Church as regards Rome. Besides, the traditions of that Church point to Rome, *and to Rome only*, as the fountain of her Christianity. Any points of resemblance to oriental rites simply prove a survival of ancient customs in a distant colony of the Church. Just as the Roman Missal bears marks of disintegration of some primitive norm. Oriental features may have been borrowed by S. Augustine in obedience to Pope Gregory, who would not have the English Church a servile copy of the Roman; or have been imported by Archbishop Theodore, by birth a Greek of Tarsus. That is to say, if the present English Church, the descendant of Pope Gregory's Mission, can be affiliated to, or be made the residuary legatee of, the original Cymric or British Church.

§ 2. The proof of the supposed primitive independence

<sup>1</sup> These were Campania, Picenum, Tuscia, Samnium, Valeria, Lucania, Calabria, Sicily, Sardinia, and Corsica. (See Sirmond. Opp. T. IV. p. 69.)

of the British Church is thought to be supported by the precedent afforded by the bishops of Cyprus, who obtained from the General Council of Ephesus A.D. 431 the confirmation of their independence of the see of Antioch. But it is forgotten that the Council was at the moment in conflict with John of Antioch ; that it unfairly gave judgment, in the absence of the defendant, at the instance and to the advantage of the plaintiffs ; and that the Arian faction had disturbed the harmonious relations of the parties concerned.<sup>1</sup>

§ 3. It follows therefore, that the Church of England, as an offshoot of Rome, was bound to render to that See, (as in truth she did,) that dutiful deference, which we even now see so willingly accorded by our Colonial Churches to the See of Canterbury. To this Thorndike agrees : “That little remembrance that remains concerning the British Church, testifies the like respect from it to the Church of Rome, as appears from the Churches of Gaul, Spain, and Afric; of which there is no cause to doubt, that they received their Christianity from the Church of Rome.”<sup>2</sup> All this however amounts not to the admission of a duty of perpetual subjection to what often degenerated into an odious tyranny.

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## CHAPTER XVIII.

### THE POPE'S SUPREMACY, ITS DEVELOPED FORM.

§ 1. From the simple notion of the Pope's being *Vicar of S. Peter*, i.e. his *representative*, and in an exalted sense *Vicar of Christ*, (as S. Paul speaks of ‘ambassadors of Christ,’) the Middle Age developed an extreme view of an inherent right of Absolute Dominion. “For whereas,” says Innocent IV., “Christ the

<sup>1</sup> Compare Routh, ‘Opuscula,’ on the 8th canon of Ephesus, with Fleury, L. XXV. § 57.

<sup>2</sup> Just Weights, &c. ch. VI. § 7.

Son of God, while He was in this world, and even from eternity, was its natural Lord, and of right might have passed sentences of deposition and condemnation and the like on emperors and others whomsoever, as on persons whom He had made and freely endowed; by like reason may His Vicar do this.<sup>1</sup> For the Lord would seem to have been indiscreet, (if I may say it reverently,) unless He had left such a Vicar behind Him as might do all this. But Peter was this Vicar. And the same must be said of his successors; since the same absurdity would follow, if after Peter's death the Lord had left mankind without the government of a single person."<sup>2</sup> The most ample assertion of Papal authority is found in the Bull *Unam Sanctam* of Boniface VIII. "Moreover we declare, say, define, and pronounce it necessary to salvation for every human creature to be subject to the Roman Pontiff."<sup>3</sup>

§ 2. But when Papal pretensions were at the highest, their action was limited by Canonists; should I not rather say, by Public Opinion? Thus, on the question of the whether a bishop might confer orders, when Pope as prohibited by the Pope, Innocent IV. uttered "a Canonists. notable saying, never to be consigned to oblivion, that without a reasonable cause the Pope is not to be sustained in certain attempts against the universal estate of the Church. He doth not say that the Pope cannot, but that he is 'not to be sustained,' that is, that the universal Church ought to resist the Pope."<sup>4</sup> "In things concerning the general state of the Church, the Pope cannot ordain against the statutes of a Council; if thereby the Church itself should be disgraced."<sup>5</sup> "If it be certain," says a Canonist, "that what the Pope

<sup>1</sup> Notice, how unconsciously that which Christ might have done *but did not do*, is identified with what the Pope not only claimed to do but also fulfilled!

<sup>2</sup> Super Decret. f. 122.

<sup>3</sup> Extravag. Commun. I. Tit. VIII. De Majoritate, c. 1. Fleury remarks, "No Catholic doubts this as it relates to the spiritual power." (H. E. I. X.C. c. 18.)

<sup>4</sup> Panormitan, T. I. f. 96.

<sup>5</sup> Ibid. f. 122.

commands is deadly sin, then *the Pope of Heaven* is to be acknowledged. Where thy conscience tells thee not to obey, thou shouldst endure excommunication rather than depart from it.”<sup>1</sup> Here we find Cardinal Newman anticipated in making Conscience “the aboriginal Vicar of Christ.” “We would rather be excommunicated by man than do aught against God, our conscience condemning us,” was the generous utterance of a Welsh Prince, Llewelyn the First, in regard to a presumed unjust excommunication of Foulques De Breauté by the Pope.<sup>2</sup>

§ 3. Whatever view was taken of the Pope’s authority, it did not secure the decision of one Pontiff from being

The Pope  
may not  
bind his  
successor.

upset by another. A Pope cannot impose a law on his successor, binding him of necessity ; “for an equal hath no power over an equal.”<sup>3</sup>

A Pope may revoke the sentence of his predecessor, make contrary constitutions, or even interpret the Divine Law otherwise than did his predecessor.<sup>4</sup> In proof of this may be adduced two Decretals clearly opposed to the sentiment of the Church in general. Pope Gregory III. (A.D. 726,) writing to Boniface of Mayence lays down, that if a husband have a wife who from infirmity cannot render the conjugal debt, and if he cannot contain, he may marry ; but he must support the first wife. “This of Gregory,” says Gratian, “is utterly opposed to the sacred canons, yea, to the teaching of the Gospel.”<sup>5</sup> By this it appears that Luther, in permitting the Landgrave of Hesse to marry a second wife in the lifetime of the first, because she was barren, imitated a Pope only too faithfully.

The second case is that of Pope Nicolas (A.D. 865,) writing to Rodulph archbishop of Bourges. He asks, “Slayers of their wives without trial, when you do not specify adulteresses or the like, what else are they to be

<sup>1</sup> Henric. De Bohic, II. f. 18.

<sup>2</sup> Letter to Henry III. A.D. 1224.

<sup>3</sup> Panorm. I. f. 137. The words are Innocent III.’s to the Archbishop of Canterbury : Decr. Greg. L. I. Tit VI. c. 20.

<sup>4</sup> Panorm. VII. f. 19. Decr. Greg. L. IV. Tit. IV. c. 3.

<sup>5</sup> II. Caus. 32, qu. 7, c. 18.

held but homicides?" "Here," says Gratian, "Nicolas seems to permit husbands to kill their wives on account of adultery or other crime of the kind. But Church discipline bids smite the criminals with the spiritual, not with the material, sword."<sup>1</sup>

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## CHAPTER XIX.

### OF THE JURISDICTION OF METROPOLITANS.

**§ 1.** The difference between Archbishops and Metropolitans appears to consist herein, that the first convey a notion of honour and precedence, the second always imply possession of jurisdiction. There are or have been in the Greek and Latin Churches Archbishops without suffragans, never Metropolitans. The latter existed in the Ante-Nicene period; and the reason why jurisdiction was assigned them is marked by the Council of Antioch, A.D. 341, "because those who have business come from every quarter to the metropolis."<sup>2</sup> When an Archbishop exercises control over Metropolitans, it is in virtue of some Primal or Patriarchal right: where over his suffragan bishops, it is as Metropolitan.

**§ 2.** No bishop may exercise jurisdiction out of his own diocese; for jurisdiction coheres with territory,<sup>3</sup> and Church order is confounded, if every bishop preserve not his own.<sup>4</sup> Wherefore Metropolitans are forbidden to interfere with that of their suffragans, except in the cases expressed by law.<sup>5</sup> Such are the following: 1. When a cause is lawfully brought before the Metropolitan by appeal. 2. When he visits his province; for then the jurisdiction of his suffragans is suspended. 3. When they

When  
they may  
exercise  
jurisdi-  
ction over  
their suf-  
fragans.

<sup>1</sup> III. Caus. 33. qu. 2. c. 5.

<sup>2</sup> Canon 9.

<sup>3</sup> Petrus De Ancharano *super Clementin.* L. II. Tit. II.

<sup>4</sup> Panorm. T. I. f. 87.

<sup>5</sup> Reiffenstuel, i. 28

are negligent. These are the principal cases, wherein he hath jurisdiction over the subjects of his suffragans.<sup>1</sup> He moreover hath it, when wrong is done throughout the whole province.<sup>2</sup> By *negligence* of suffragans is meant the omission of that which by law or custom a prelate is bound to do by reason of his office, and which it is in his power to do.<sup>3</sup> In case of a suffragan's waywardness, the Archbishop or Metropolitan shall admonish him; and, if he amends not, supply his place against his will, that is, ordain and institute clerks in his diocese, excommunicate, absolve, and condemn.<sup>4</sup> Though he may not hear the causes of the subjects of his suffragans, save where they devolve on appeal; yet he reasonably hears those of dioceses or of a bishop, if such be impleaded.<sup>5</sup> In such matters as episcopal Elections, the ratification rests with the Metropolitan.<sup>6</sup> It is inferred that an Archbishop has full power of ordaining preachments in the churches of his suffragans, of executing general and ancient canons, and of framing new ones, as to him may seem expedient.<sup>7</sup> I cannot but think this inconsistent with the doctrine laid down at the beginning of this section; unless the Archbishop acts in Synod or on Visitation, with the advice of his comp provincials.

§ 3. A Metropolitan may freely visit his province, though his suffragans be not negligent; and even reiterate his visitation, though their assent be withheld. Of Metro-political Visitation. They must however be previously consulted, and his decision be taken in their presence. In visiting he must preach the Word of God, and inquire into the life and conversation of the ministers of churches, without exacting any oath. The same form is to be observed by other prelates visiting their people by ordinary right.<sup>8</sup>

<sup>1</sup> Reiffenstuel, I. 391.

<sup>2</sup> Archidiaconus *sup.* Decret. f. 183.

<sup>3</sup> Reiffenstuel, Jus Canonicum, I. 284.

<sup>4</sup> Archidiac. f. 183.

<sup>5</sup> Petr. De Ancharano, f. 82.

<sup>6</sup> I. Conc. Nicaen. can. 4.

<sup>7</sup> Petr. De Ancharano, L. III. Tit. VII. f. 55.

<sup>8</sup> Innocent IV. and Boniface VIII. in Sext. Decr. III. Tit. 20.

The  
Metro-  
politan  
Church,  
the norm  
of Ritual.

§ 4. The Council of Yenne A.D. 517, ordains that the bishops of the province are bound to observe the order of celebrating Divine Service held by their Metropolitans.<sup>1</sup> That of Vannes A.D. 462, rules that the order of sacred ceremonies be the same in the whole province.<sup>2</sup> The Fourth of Toledo orders uniformity throughout Spain; assigning as a reason, "lest it should seem to ignorant men that there was a schism" between the several churches. But it must not be supposed that, because the Church values uniformity and thus checks the growth of private experiments, she therefore meant to encourage Primalia sees to innovate needlessly on the prescription of Catholic Antiquity or the order of their own province. A Council of Salzburg A.D. 1385, ordained that all clerks should, in the celebration of the Divine Office, conform to the usage of the cathedral church. It does not appear that usage fell short of the prescript Order of the Church.

Appeals to  
Rome of  
old dis-  
couraged  
in Eng-  
land.

§ 5. Balsamon argues from the 31<sup>st</sup> Canon of the Council of Carthage forbidding appeals beyond the sea, that *à fortiori* appeals to Rome from other countries, not so closely connected with it as Africa, are not allowable or necessary.<sup>3</sup> The tendency of England, long before the Reformation, was to discourage appeals to Rome. For when the King's Court at the suit of the Ordinary arrested and imprisoned a man, who remained forty days excommunicated, until he submitted and gave security for his obedience, an appeal to the See of Rome availed him not, while one to the Archbishop of Canterbury as superior Ordinary was allowed. So it became the custom in England for a man to lodge a double appeal, one to Rome, that he might litigate there; another to the Archbishop, to be through him defended from penal consequences in

<sup>1</sup> Canon 27, *ap.* Labbe IV. 1579.

<sup>2</sup> Canon 15.

<sup>3</sup> Bevereg. Synodic. I. 554,

the King's Court; the form being, 'I appeal to the See Apostolic, and (for defence) to the Archbishop of Canterbury.'<sup>1</sup>

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## CHAPTER XX.

### OF THE SYNODAL RELATIONS OF METROPOLITANS AND THEIR SUFFRAGANS.

§ 1. BISHOPS being summoned to Council by letters of their Metropolitan, or to the ordination of a bishop, ought Their rights in Synod to attend, and to teach or be taught what tends to the correction of the Church: which thing are co-ordinate if they disregard, they seem to accuse themselves, unless perchance they cannot go by reason of infirmity.<sup>2</sup> The comprovincial bishops have a decisive voice, and judge with their Metropolitan. If then he be of one opinion, and they of another, the sentence of the suffragans prevails; for that they have a decisive voice, and are joint-judges. On the same ground, the Archbishop cannot dissolve a Synod without the assent of his suffragans, nor enjoin silence on any one, nor order any writing or bill to be read or not read.<sup>3</sup> Neither Metropolitan nor bishops ought to set about any special act, such as *examining innovations in doctrine* or alienating church property, without the judgment of their Primate; nor he without consulting them.<sup>4</sup>

§ 2. There is no ancient precedent for the presence of priests, or laymen, in a provincial synod, save such as an absent bishop might depute to represent him, Innovations in Anglican practice. or such as the synod might think fit to summon; as is seen by the provisions of the Fourth Council of Toledo (can. 4;) which prescribes

<sup>1</sup> Hostiensis i.e. Henricus de Segusio Card. Episc. Ostiensis, *super Decreto*, II. fol. 169.

<sup>2</sup> Council of Laodicea, can. 40; and of Agde, c. 5. I. Decret. dist. 18. capp. 5, 13. <sup>3</sup> Van Espen, I. p. 177.

<sup>4</sup> Aristaenus on the Apostolic Canons, c. 34. *ap. Bevereg. Synodic.* I. 23.

the form of holding such synods. And whereas the Church of England of late allows an appeal from a diocesan to the Archbishop of the Province in his Court ecclesiastical, the earlier English Church ordered, that, where a bishop could not reform a matter in his diocese, he was to lay it publicly before the Archbishop *in Synod*.<sup>1</sup>

## CHAPTER XXI.

### OF HOLY ORDERS.

§ 1. “*Holy Orders* we call the Diaconate and the Priesthood; since truly the primitive Church, we read, had none other.”<sup>2</sup> The Canonists of the Middle Ages saw in the presbyters and deacons of the Church an extension of the orders of priests and Levites of the Old Law; and (logically enough) the Roman Pontiff supremely enthroned in the room of Aaron the High-priest. The Theologians said, that the Episcopate was “a certain pre-eminence, dignity, or honour,” *not* an order. “If ‘Order’ be taken for *office*,” says John De Athona, “then the Episcopate is an holy Order.”<sup>3</sup> Archbishop Aelfric distinctly says that the priest hath the same order as the bishop, only the latter is more honourable.<sup>4</sup> This view was sometimes acted upon. For the Greeks, A.D. 867, charged the Latins with ordaining a man Bishop without his having been ordained Priest. Ratramn in reply denied the fact; but Eneas bishop of Paris admitted it, on the ground that the Episcopate eminently involves the Priesthood. But this theory finds no countenance in the early records of the Church. Bishop Pearson even roundly asserts that S. Chrysostom among the Greeks, S. Jerome among the

The Episcopate not  
a distinct  
Order, in  
the view  
of the  
Canon  
Law.

<sup>1</sup> Can. 25 of Archbishop Cuthbert, A.D. 747.

<sup>2</sup> Synod of Beneventum, A.D. 1091. I. Decret. dist. 60. c. 4. So Bohic: “Ordines qui auctoritate Christi et Apostolorum sacri fuerunt et sunt, qui sunt Diaconatus et Sacerdotium.” (*Sup.* Decret. I. p. 44.)

<sup>3</sup> Fol. 55.

<sup>4</sup> Can. 17, A.D. 957.

Latins, are the first we find upholding it.<sup>1</sup> I think the passage in S. Clement of Rome (*Ep. I. ad Corinthios*), where he asserts that the Apostles, foreseeing that strife should arise touching the Episcopate, arranged that approved men should on their demise succeed to their ministry,—is enough to prove that Bishops inherited Apostolic power to check schism; for it was among *presbyters* that the evil was foreseen to arise. Each particular diocese being regarded by the early Christians as a Church complete in itself, and its President sharing with others elsewhere the plenitude of the episcopal power, every single Bishop presented to their eyes the image of Aaron. According to either theory, Bishops, (whether we regard them as essentially distinct, or as simply invested with the fullness of the priesthood,) Priests, and Deacons, were held to possess *Holy Orders*. And, although a later age granted Sub-deacons the same distinction, Lancelotti ingenuously confesses that “such an order was not reckoned among the Sacred by the ancients.”<sup>2</sup>

§ 2. The Church regards the character stamped by Ordination as indelible; as we see “that the censers of Korah and his followers, though consecrated in schism, are nevertheless challenged by God.”<sup>3</sup>

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## CHAPTER XXII.

### OF THE ELECTION OF BISHOPS.

§ 1. WE learn from the third Council of Rome, A.D. 531, that the clergy and people and they *whose assent was necessary to the act* decided; and of three selected candidates he who had the best testimonials was chosen.<sup>4</sup> Theodoret somewhat earlier explains

<sup>1</sup> Vindiciae Ignatianae, T. II. p. 566, ed. Oxon. 1852.

<sup>2</sup> Institutiones Juris Canon. I. Tit. 22.

<sup>3</sup> Thorndike, Works, Vol. V. p. 564. <sup>4</sup> Labbe, Concilia, T. IV. f. 1692.

it further by “all being unanimous, both clergy and those in authority and station”; while he limits the assent of “the people” to a signifying their pleasure by acclamations.<sup>1</sup> The Council of Sardica, canon 2, clearly marks the abuses that attended the people’s *tumultuous* share in the election. For, if a bishop pleaded the invitation of the people to justify his translation to another see, it says that he may have bribed insincere Christians to cry out in church and demand his election. Also in canon 14, it glances at intriguers who frequently preached where the diocesan was inefficient in that duty, in order to pave the way to their own translation; and orders that bishops should avoid suspicion by not resorting too often to strange churches.

The term ‘suffrages,’ which we often meet with in connexion with the laity, does not indicate their actual *voting*, but simply *assent*, for the most part irregularly and even tumultuously expressed; as may be seen in S. Augustine’s nomination of his successor Eraclius.<sup>2</sup> Bishop Beveridge labours to prove that the part of clergy and people was limited to approbation of the choice made by the bishops; remarking that it matters not whether it preceded or followed the episcopal selection.<sup>3</sup> But there is a difference between a mere acquiescence in a choice made by others and the possession of a right of previous recommendation. The power of ratifying an election does not prove the bishops were electors, any more than the power of deciding a disputed election proves our House of Commons to be the electors of a knight of the shire, and not the free-holders of the county. Peter De Marca shows that no formal distinction between clerical and lay rights is clearly established in ancient writings.<sup>4</sup> But I think with Thomassin, that the clergy must in early times

<sup>1</sup> Hist. Eccles. l. IV. c. 20.

<sup>2</sup> Epist. cciii. Tom. II. p. 790, *ed. Bened.* See also S. Cyprian, Ep. 67. *ed. Oxon.* S. Chrysost. De Sacerdotio, T. VI. p. 23, *ed. Saril.*

<sup>3</sup> Annotationes *ap. Synodicon*, T. II. p. 48.

<sup>4</sup> De Concordia Sacerdotii et Imperii, VIII. c. 2. p. 378.

have had greater influence than the laity in episcopal elections ; if only for this reason, that a limiting process must have been going on for a long time, before the Church came to accept the narrow formality of a Capitular Election. We learn for the first time, from the General Council of Lateran, c. 28, A.D. 1139, that the Canons of cathedrals at that period sought to exclude from the election of Bishops, not only the laity, but also the other clergy, secular and regular. Gregory IX. strictly forbade the laity joining the Canons in the election.<sup>1</sup>

§ 2. In the East we find the Sovereign first interfering on the plea of avoiding popular tumults, in the case of The origin and progress of the *Regale*, 1. in the East. 2. in the West. 3. in Britain. Theodosius the First's nomination of Nectarius to the see of Constantinople.<sup>2</sup> The Frank kings assented to the election of S. Medard in A.D. 520 ; and their example was followed by Justinian, when Rome was recovered by the empire. We are not to suppose that the Roman emperors meddled with elections to inferior sees. Florus Magister about A.D. 820, marks the ground of the right conceded to Princes by the Church, as a thing “*for the sake of peace and concord with the world-power.*”<sup>3</sup> The Twelfth Council of Toledo assumed the right of cancelling the privileges of metropolitan and bishops, assigning the choice of bishops to the Sovereign and their consecration to the Bishop of Toledo. The Gothic hierarchy of Spain was richly endowed ; and we may safely infer the corrupt source of their deference to the Crown. When we consider also, that in the Eleventh Council of Toledo the Fathers had to impeach certain brother-bishops guilty of homicide and seduction, their authority is seriously impaired.

Under an autocracy such as that of the Byzantine Cæsars, the Sovereign “was subject to neither laws nor canons . . . and hence promoted Patriarchs and bishops

<sup>1</sup> *Decretal. L.I. Tit. VI. c. 56.*

<sup>2</sup> *Sozomen. Hist. Eccles. VII. c. 8.*

<sup>3</sup> *De Marca, ubi supra*, pp. 401-411.

*even without election.*"<sup>1</sup> In England under the Conqueror matters had come to a like pass; for we are told he would suffer no synods to enact save what he himself had first ordained, nor any bishop to visit with church penalties any of his barons for any capital crime.<sup>2</sup> We discover traces of the donation of episcopal sees in the right of patronage formerly exercised by the Archbishop of Canterbury over that of Rochester, by the Earl of Gloucester over Llandaff, by the Earl of Derby over that of Sodor and Man.<sup>3</sup> But in Greece the emperor John Cantacuzene (A.D. 1347–1355,) acknowledging the wrong done to the Church heretofore, “restored the ancient liberty” of electing to the bishops; reserving to himself the selection of one out of three names submitted to him.<sup>4</sup> He stigmatizes as ‘downright mockery and a feint of seriousness with God,’ *βωμολοχῶντας ἀντικρύς καὶ κατειρωνευομένους τοῦ Θεοῦ*, to allow the bishops to invoke the grace from on high and to elect him whom he (the emperor) himself had before chosen in word and deed. King James VI. acted on the same plan in Scotland, as Leslie tells us; but Charles I. resumed the Regale in its full extent.<sup>5</sup> How remote our practice is from the primitive may be learnt from the words of S. Leo (Epist. 92:) “No reason allows that they be reckoned Bishops, who have neither been elected by the clergy, nor demanded by the laity (‘à plebibus,’) nor consecrated by the bishops of the province with the judgment of the Metropolitan.” For in England that Royal right of intromission in elections is, by law, so absolute, as to involve in the penalties of *Praemunire* the cathedral chapter that shall presume to disregard it. The abuse corrected by the Greek emperor still tarries in the Church of England. The questions put by her most *learned* theologian touch not the conscience of her members. “When Sovereign Powers, by general laws, (such as the 25th Henric. VIII. cap. 20,)

<sup>1</sup> Balsamon, *ap.* Bevereg. Synodic. I. p. 538.

<sup>2</sup> Eadmer, Hist. Novorum, I. 20. <sup>3</sup> Selden ad Eadmerum, pp. 142, 144.

<sup>4</sup> Joan. Cantacuzen. Hist. IV. p. 859. <sup>5</sup> Works, Vol. I. p. 677.

forbid ordinations to proceed but upon persons nominated by themselves, how shall the right of the Church take place? Or S. Paul's precept to Timothy 'to lay hands suddenly on no man' be obeyed by those who must perforce ordain?"<sup>1</sup>

**§ 3.** Whereas the consent of the clergy and people and of the episcopal order is required, the clergy should have the means of resisting, if they see themselves overborne; for their judgment touching him who is to rule them ought to be free.<sup>2</sup>

Exceptions against a bishop-elect. Where exceptions are made, the proofs and allegations of witnesses should always be favourably interpreted, as regards the person affected by them.<sup>3</sup>

King's license, when necessary? **§ 4.** It was held that the demise of a Prelate might be announced to the Sovereign, and his consent or license be asked, if he possessed that right by custom or by privilege.<sup>4</sup>

Bishops acquire no spiritual right from Royal authority. **§ 5.** Persons instituted by Kings acquire from them no spiritual right, as, for example, to confer churches, ordain clerks, and the like; but this power they get from the Consecrator or other ecclesiastical ministers.<sup>5</sup>

## CHAPTER XXIII.

### OF THE CONFIRMATION OF BISHOPS.

**§ 1.** **THE Confirmation of an election holds, even where the election is null;** provided it be done full wittingly by the confirming Prelate, pending the will of the electors; or if it rest with the pleasure of the Confirmer.<sup>6</sup>

It holds, though the election be null. **§ 2.** The mediæval Canonists held, that the authority

<sup>1</sup> Thorndike, Right of the Church, c. IV. § 87.

<sup>2</sup> I. Decret. dist. 61. c. 13.      <sup>3</sup> Innocent, *sup. Dece.* f. 33.

<sup>4</sup> Cardinal Zabarella, *sup. Dece.* I. f. 137. "The Kings of Leon, Castille, and Scotland possess this custom."

<sup>5</sup> Innocent. *sup. Dece.* f. 24.

<sup>6</sup> *Ibid.* f. 26.

a Bishop exercises by reason of his consecration belongs to the episcopal *office* rather than to *jurisdiction*;<sup>1</sup> and that after election and canonical confirmation spiritual wedlock is contracted between the persons of the electors and the elect, to which the episcopal dignity adds nothing. In proof whereof they instanced the case of bishops renouncing their charge but not the honour attaching to their order.<sup>2</sup> Peter De Ancharano cannot account for priests not being able to confer on others the priesthood with its inferior grades, of which they were possessed, unless it be that the bestowal of them belonged to the episcopal order.<sup>3</sup>

§ 3. This theory, according to which a confirmed Elect (even if he be not a priest) may exercise all that appertains to *jurisdiction*, is pronounced by Van Contrary to the primary end of Episcopacy. Espen "contrary to the discipline of the primitive Church and to the primary end of Episcopacy, for one who has not fully partaken of the priesthood to exercise rule over clergy and people."<sup>4</sup>

§ 4. Panormitan argues from the spiritual bond existing between an Elect and his See, (to which Consecration adds nothing,) that it is unfair to remove an Elect, confirmed but not consecrated, though he were overtaken by some incurable disease. This view defeats the primary end of the Ministry, namely, the spiritual benefit of the people.<sup>5</sup>

§ 5. An Elect, when confirmed, cannot give up his See and return to his former benefices; though if by law his election be quashed, he may by law return to them.<sup>6</sup> As soon as he gets the administration of the property of his See, the benefices he was possessed of may be freely conferred by the patrons.<sup>7</sup>

<sup>1</sup> Philippus Francus, sup. Sext. Decr. f. 53.

<sup>2</sup> Decr. Greg. L. I. Tit. VII. c. 2.

<sup>3</sup> Super Sext. Decret. f. 206.

<sup>4</sup> I. 105.

<sup>5</sup> VI. f. 51.

<sup>6</sup> Innocent. sup. Decr. f. 12.

<sup>7</sup> Council of Lateran, can. 3. A D. 1179.

**§ 6.** It obtains of custom, observed as law, that the possession generally of episcopal rights, or of any other dignity, is acquired by installation made in a seat or place deputed thereunto.<sup>1</sup>

Effect of Installation.

An Elect, not styled *Bishop* before consecration.

Case of Bishop refused admission to his See.

**§ 7.** A person, though he be confirmed, ought not to be called *Bishop* or *Archbishop*, but *Elect*.<sup>2</sup>

**§ 8.** Where a consecrated Bishop without his own fault fails to take possession of his See through the refusal of the people, he shall enjoy his honour and function, but submit himself to the ordinance of the Provincial Council.<sup>3</sup>

## CHAPTER XXIV.

### OF THE POSTULATION OF BISHOPS.

A BISHOP is *postulated*, when one is desired whom the canons of the Church or the laws of the State render ineligible without a dispensation. Such, according to the Council of Sardica, are advocates in a law-court, and persons invested with high civil command.<sup>4</sup> S. Lupus of Troyes is an instance of the first; SS. Ambrose and Germanus of the second.

An Archbishop is postulated, not elected, for another See.<sup>5</sup>

Postulation is never to be confirmed, for it is a case where no jurisdiction can be conferred; and therefore the Superior ought to say, not 'I confirm your request,' but 'We admit your request,' or words to that effect.<sup>6</sup>

<sup>1</sup> Innocent. *sup. Deec.* f. 88.

<sup>2</sup> Panormitan, VII. f. 68.

<sup>3</sup> Council of Antioch, can. 18.

<sup>4</sup> Can. 13.

<sup>5</sup> Decret. Greg. I. T. V. cap. 4.

<sup>6</sup> Innocent. *sup. Deec.* f. 16.

## CHAPTER XXV.

## OF THE EXAMINATION OF BISHOPS.

§ 1. THE canons of the Fourth Council of Carthage, at which S. Augustine assisted, lay down the qualifications of a Bishop, thus: “If he be by nature prudent, docile, chaste, sober, careful of his own affairs, Bishop. humble, affable, merciful, literate, if skilled in the law of the Lord, if *cautious about the sense of Scripture*, if *versed in the dogmas of the Church*; and, above all, if he *asserts in simple words the documents of the Faith*; if he satisfies these tests, then let him be ordained, with consent of the clergy and laity, by the synod of the provincial bishops, and chiefly with the authority or presence of the Metropolitan.”<sup>1</sup>

§ 2. The Byzantine Treasurer, Aristaenus, remarks that bishops should know the traditions of the holy Fathers, and solve questions accordingly; not stringing together reasons of their own, lest unable to explain them they fall wide of the true interpretation.<sup>2</sup>

§ 3. But specially was Preaching esteemed an episcopal function; whence Balsamon holds it on a level with Apostolic dignity, “because of its profession of a special teaching.”<sup>3</sup> It was gradually extended to function. *Doctors*, who at Constantinople taught in the cathedral by right of the Patriarch.<sup>4</sup> At length, in the Council of Vaison A.D. 529, the power of preaching the Word was granted to all parish priests; while in case of their inability homilies were to be recited by deacons.<sup>5</sup>

<sup>1</sup> I. Decret. dist. 23, c. 2.

<sup>2</sup> Bevereg. Synodic. I. 179. Few, I imagine, would nowadays be of Balsamon’s mind, who desires to continue through life a child and a learner. (Ibid. I. 555.)

<sup>3</sup> Ibid. I. 362.

<sup>4</sup> Ib. I. 178

<sup>5</sup> Canon 2. Labbe. IV. 1680.

**§ 4.** Besides the above qualifications, a bishop was to be so far acquainted with secular business, that the churches might not suffer loss under his control. He was not to be a mere theorist.<sup>1</sup>

**§ 5.** While bodily defects that hinder ministerial work, such as deafness, blindness &c. disqualify a man for the office of Bishop, a mere imperfection of sight or limb does not.<sup>2</sup>

## CHAPTER XXVI.

### OF THE CONSECRATION OF BISHOPS.

**§ 1.** It was ordered from earliest times that a bishop should be consecrated by no less than three bishops; later on when the hierarchy was developed, by the Metropolitan and two assistant provincial bishops. The reason was, to secure the Apostolic number of *three* witnesses to the consent of the general body to the consecration, and to avoid suspicion of secrecy. Otherwise, in case of need, a single bishop might consecrate. So S. Athanasius and others are recorded to have ordained bishops singly and out of their own province, when Arianism prevailed in the empire.<sup>3</sup> Also in case of a solitary missionary bishop, when attesting bishops could not be had, Pope Gregory the Great decides that he may ordain others Bishops.<sup>4</sup>

**§ 2.** If it be objected to the Anglican Succession, that the four Consecrators of Archbishop Parker were not all Supposed of them diocesan bishops, one (Hodgkins) being flaws in the Roman and Anglican Successions. we may point to the yet more irregular consecration of Pope Pelagius I. “When there were

<sup>1</sup> I. Decret. dist. 39.

<sup>2</sup> Canones Apostolici 76, 77.

<sup>3</sup> Sec Socrates and Sozomen.

<sup>4</sup> VIth Answer to Augustine.

not bishops (enough) to ordain him, *two* were found, John of Perugia and Bonus of Ferentino, and Andrew, *presbyter* of Ostia, and they ordained him Pontiff; for there were not then among the Clergy those who could have promoted him.”<sup>1</sup>

**§ 3.** We find in Scripture that the Apostles laid their hands on the ordained and prayed over them. Ceremonial not necessary to the conferring of Orders. But other form observed by them we do not find. Whence we believe, that unless the Church had afterwards invented forms, it would have sufficed for the Ordainer to say, ‘Be thou a Priest,’ or words of like purport.<sup>2</sup>

**§ 4.** The Eucharist is not essential to consecration, Nor the celebration of the Eucharist. or ordination, or confirmation; saving the ordinance of the Church and for reverence of the Sacraments, which ought not to be conferred without It.<sup>3</sup>

Custom of Scotland and Wales. **§ 5.** It was a custom in Scotland and Wales to ordain out of the Ember-seasons, at the consecration of churches and altars; but it was reprobated by Pope Alexander III.<sup>4</sup>

Case of the Episcopal Order conferred *per sal-tum*. **§ 6.** We have already seen<sup>5</sup> how little store the Canonists set by the Episcopal Order as *distinct from the Priesthood*. In Panormitan’s eyes it did not seem to differ essentially from the latter, unless it was that it enlarged the priestly power. He follows S. Jerome’s statement that “because of schisms it was ordained that one of the presbyters should be chosen to preside over all, and *be called Bishop*”; and infers thence, “that the Bishop presides only in dignity, not in order.”<sup>6</sup> Dominic à S. Geminiano maintains, that whereas presbyters ordained others indiscreetly Peter and the other Apostles restrained their powers of conferring all Sacraments, and created certain

<sup>1</sup> Anastasius Bibliothecarius, *in Vitâ Pelagii*. Van Espen, I. 108.

<sup>2</sup> Innocent. *sup. Decret.* f. 42.

<sup>3</sup> Panormitan, T. I. f. 148.

<sup>4</sup> Decret. Greg. L. I. Tit. XI. c. 2.

<sup>5</sup> Chapters XXI. and XXIII.

<sup>6</sup> Panorm. VII. ff. 197, 200. Grounded on I. Decret. dist. 95, c. *Olim*.

men possessing full powers, “*whom they called Bishops.*”<sup>1</sup> But I must remark that the writings of S. Clement and S. Ignatius were almost unknown to these Canonists; and point out that in the first century an order of *Apostles*, beside the Twelve, probably filled the room of those afterwards styled *Bishops*.<sup>2</sup> Yet as a natural result of their theory, the Canonists held, that the episcopal Order was valid, though the person ordained Bishop were not previously a Priest.

§ 7. This theory was followed by the Anglican Church in the consecration of Archbishop Spottiswoode and others Anglican in the reign of James I.; the contrary in that practice. of Archbishop Sharpe and others at the Restoration. But, as even the Canonists held that the former proceeding was ‘preposterous,’ and ‘injured the execution of episcopal functions’<sup>3</sup> in such as had not been Priests before, it will be seen that the course last adopted was the correct one.

## CHAPTER XXVII.

### OF THE FUNCTIONS OF BISHOPS.

§ 1. THE Bishop was expected in general to preach on Sundays and festivals so as to suit the capacity of the Their duty people.<sup>4</sup> In extensive dioceses he was to commission fit persons to supply his place, as well to preach-ing. in preaching, as in enjoining penances.<sup>5</sup>

§ 2. The government of the Church should not be despotic. The authority of her chiefs should be fatherly, And to govern- not apparent save in the maintenance of rules. A bishop should support his dignity by his faith ment. and good works, and occupy himself wholly

<sup>1</sup> *In Pro-oemio ad Sext. Deir.*

<sup>2</sup> Eusebius, *Hist. Eccles.* I. c. 12.

<sup>3</sup> Panorm. *ubi supra.*

<sup>4</sup> Council of Mayence, A.D. 813.

<sup>5</sup> I Deir. Greg. Tit. XXXI. c. 15.

with reading, prayer, and preaching.<sup>1</sup> He should not love display, but be simple and truthful in his discourse.<sup>2</sup> Priests should every Lent render their Diocesan an account of their faith and ministry.<sup>3</sup> If, according to S. Ignatius, the priests must do nothing "without the bishop," so doth the 33rd Canon of the Apostles rule that he on his part do nothing short of the will of all. Where a bishop enjoins aught that is of a dubious character, unsupported by the general voice of his clergy, he acts on lines unknown to the primitive Church. Fleury maintains that parish-priests hold immediately of the Bishop, and that he always retains the right of exercising functions in every parish; a position pronounced *erroneous* by the Faculty of Divinity at Paris. As the bishops succeed in the room of the Apostles, so do the priests in that of the Seventy Disciples. It would seem, that, as the bishop cannot be superseded by his superior, save where there is neglect of duty, the same rule applies to his own subjects.<sup>4</sup>

§ 3. When a bishop visits his diocese to confirm, priest and people should be ready to receive him. Procurations, why paid? Procur-  
tation is given in token of subjection and for the sake of hospitality, rather than of strict right; for on this and other accounts bishoprics have revenues. Panormitan would seem to bribe the bishop thereby to visit his churches; urging that the property of the churches were assigned to public uses.<sup>5</sup> A good reason truly, if the bishoprics were insufficiently endowed.

§ 4. Besides the chief duties already noticed, other lesser functions were reserved for bishops in the ancient Church; such as the veiling of nuns, and the consecration of chrism for Confirmation. The former action might be committed to a priest.<sup>6</sup> Widows also made religious profession before

<sup>1</sup> Fourth Council of Carthage, A.D. 398, Carons 15, 17.

<sup>2</sup> Council of Pavia, c. 4. A.D. 850.

<sup>3</sup> German Council, A.D. 742

<sup>4</sup> Discours X<sup>me</sup>.

<sup>5</sup> T. V. fol. 36.

<sup>6</sup> Third Council of Carthage, c. 36. A.D. 397.

the bishop, and received the habit.<sup>1</sup> An instance occurs as late as A.D. 1506, when Thomasina Dawbeney widow vowed chastity before Thomas bishop of *Tyne* (Tenos).<sup>2</sup> Even hermits were blessed; for I find that the bishop of Exeter in 1431 blessed Thomas Cornish “purposing to lead a heremitical life according to the rule of S. Paul the first Hermit.”<sup>3</sup>

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## CHAPTER XXVIII.

### OF THE RELATIONS OF BISHOPS WITH THEIR CLERGY.

§ 1. A BISHOP should oppose himself as a wall for the House of God; otherwise he would rather seem to be a mere A Bishop's keeper of rolls.<sup>4</sup> He should be ready to defend behaviour. the honour of his brethren in the ministry, nor too readily give ear to the prejudices of the laity. He should treat priests as sons or brethren, not as vassals; for they too are *elders*, though for the public good he has the pre-eminence.<sup>5</sup> He should consider himself, out of church, *in camerá*, their *equal*;<sup>6</sup> and live on familiar terms with them. Therefore, he is not bound to wear his rochet at home or in his chamber.<sup>7</sup> The Sixth Council of Paris complains of bishops who affected the society of laymen rather than that of clergymen.<sup>8</sup> It is marked as a fault in a bishop to be often absent from his See, or to go to distant places for his pleasure.<sup>9</sup>

§ 2. Hospitality was considered so necessary to a bishop, that, if any one were a stranger to that virtue, he His hospi- was by law refused consecration. So Gregory tality. the Great inquires concerning the Archdeacon

<sup>1</sup> Council of Orange, c. 27. A.D. 441.

<sup>2</sup> MS. Harley. 6966. So Shakespeare's Sir Eglamour “vow'd pure chastity,” when “his lady and his true love died.” (Two Gentlemen of Verona.)

<sup>3</sup> MS. Lansdowne 963.

<sup>4</sup> Peter de Ancharano, f. 151.

<sup>5</sup> Panorm. VII. f. 198.

<sup>6</sup> “Collegam, id est, parem.” Fourth Council of Carthage, can. 35.

<sup>7</sup> Panorm. VI. f. 8.

<sup>8</sup> Can. 21. A.D. 829.

<sup>9</sup> Ibid

of Ancona, whether it were true that he was so close (*tenacem,*) that a friend never entered his house for charity's sake.<sup>1</sup> But the excess of the virtue is severely branded. The same Pope tells the bishop Natalis, that he should not have believed the report, that forsaking the pastoral care he was solely taken up with entertainments, were it not accompanied with graver faults.<sup>2</sup>

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## CHAPTER XXIX.

### OF THE BISHOP'S DUTY WITH REGARD TO ORDINATION.

§ 1. If a bishop ordain a priest or deacon without assigning him a title for his support, he is to grant him means to live till he provide him with a benefice.<sup>3</sup>  
 Ordaining on a Title, By a Title is meant an ecclesiastical benefice or why required? other means of honestly supporting a clerk.<sup>4</sup>  
 This ordinance originated in the General Council of Chalcedon, canon 6, which annuls an ordination without a title; and was intended to save the clerical order from the disgrace of mendicancy.<sup>5</sup>

§ 2. The fact of ordination alone furnishes a person ordained without a title with a claim on the ordainer to provide him with a benefice.<sup>6</sup> The obligation is limited, if the ordained possess means of his own. The ordaining bishop as well as the ordained are to be suspended for three years, if they have agreed to set aside the question of maintenance. For Simony is contracted, not merely by giving, but also by remitting temporal advantages in return for spiritual.<sup>7</sup> The question was raised,

<sup>1</sup> Epistol. Registr. XII. 6. Decret. I. dist. 85. c. 1. <sup>2</sup> Ibid. II. 14.

<sup>3</sup> Third Council of Lateran, can. 5. <sup>4</sup> Reiffenstuel, I. 299.

<sup>5</sup> Panorm. VI. f. 23. He adds, "esset valdè utile servare dispositionem hujus, nam turba clericorum facit eos contemptibiles."

<sup>6</sup> Panorm. II. f. 48. <sup>7</sup> Reiffenstuel, Jus Canonic. I. 315.

Whether the heirs of a bishop ordaining imprudently, or his episcopal successor, were liable to the obligation. And the solution was, that where the cathedral church was rich, it incurred the penalty; where poor, then the bishop's heir, by the rule *delictum personæ*.<sup>1</sup>

§ 3. The Council of Angers A.D. 1279, forbade the Letters of bishop's official taking money for letters of Orders. This could not in reason extend to a legitimate fee for the same.

A Bishop's duty in regard to ordaining by Letters dimissory.

§ 4. A bishop is not bound to examine a clerk presented to him by another bishop. If however he knows him to be unworthy, he sins by ordaining him; for he is not bound to do an unlawful thing to pleasure another person.<sup>2</sup>

## CHAPTER XXX.

### INCIDENTS OF EPISCOPACY.

§ 1. WHERE the faithful have multiplied, bishops should be appointed, not without the consent of the original Diocesan, and with a dutiful regard to the dignity of the Episcopate, so that it becomes not cheap. Such would be the case, if a see were set up, where a single priest might serve the purpose.<sup>3</sup>

§ 2. Where peoples of different languages, rites, and customs, but professing the one Faith, are intermingled within the same diocese, the bishop should provide fit persons to minister to them according to the said diversities. But there may not be two bishops in the same diocese. If urgent need require it, the Diocesan shall appoint as his Vicar a Catholic

<sup>1</sup> Panorm. VI. f. 28. Decret. Greg. L. III. Tit. V. c. 16.

<sup>2</sup> Panorm. VI. f. 28.

II Decret. Caus. 16. qu. 1. cc. 53, 51. Council of Antioch, can. 4.

prelate conformable to the said nationalities, which prelate shall in all things be subject to the Diocesan.<sup>1</sup> Patrons are forbidden to present to a benefice a clerk who cannot understand and speak the language of the people.<sup>2</sup> This rule was made in view of the Brétons. The neglect of it in Wales has largely contributed to the alienation of the Cymric people from the Church of England.<sup>3</sup>

§ 3. By the common custom of Italy, that was called a city which had a bishop. This however was not of law, Episcopal for a city may be without a bishop; nor was cities. it usual among the Germans. In the primitive Church it was ordered that bishops should not be appointed in towns or villages, but only in populous cities.<sup>4</sup>

*Peculiar* § 4. A bishop may limit the rights of the Diocesan in churches situated in another diocese, when he can shew a prescription of time immemorial.<sup>5</sup>

§ 5. By common law, a bishop may not be a Canon in his own cathedral, nor assist in chapter as a Canon; for the rights of a Prelate and Chapter are distinct. A Bishop not to be a Canon in his own cathedral. Where the contrary obtains, the custom was perhaps brought in to facilitate business by aid of the Prelate's experience; and therefore it is only local.<sup>6</sup>

<sup>1</sup> Decret. Greg. I. Tit. XXXI. c. 14.

<sup>2</sup> Council of Château-Gonthier, c. 16. A.D. 1231.

<sup>3</sup> The appointment of Englishmen commenced under the Plantagenets. Under Edward III. and Richard II. I find Will. *De Wykeham*, Prebendary of Aberguily and of Llandewi-brevi, *dioc. Menev.* in 1361; John Sloleye, Archdeacon of Merioneth, in 1387; Robert *Hallam*, Canon of Clennokvawre (Clynnog), in the same year; Henry *Chichele*, John De Wymundham, and Tho. De la Felde, Parsons respectively of Llanvarchell, Machynlleth, and Llanroust, *Assav. dioc.* in 1382-98. (MSS. Harlei. 6960, 61.) The practice was corrected under the Tudors, and revived by the House of Hanover.

<sup>4</sup> Panorm. II. f. 110.

<sup>5</sup> Ibid. VI. f. 142. He instances the Bishop of Fiesole, who possessed a parish in the city of Florence.

<sup>6</sup> Ibid. f. 63.

## CHAPTER XXXI.

## OF THE TRIAL OF BISHOPS.

§ 1. THE sixth canon of the Second General Council, (apparently not received by the Westerns,) rules, that, in case of charges of a personal nature being brought against a bishop, no regard be paid to the person or religion of the plaintiff; for the plaintiffs' bishop's conscience should be free, and the person alleging injury obtain his rights, whatever be his religious profession. But in case of charges of an ecclesiastical nature, no heretics may be admitted to accuse an orthodox bishop.

Who admissible as accusers or  
Who admissible as accusers or

By 'heretics' are understood *persons expelled from church communion*; and also *those professing sound faith, yet separatists from the bishops of the Catholic Church*. Nor are persons themselves charged with an offence to be admitted as accusers.

§ 2. Those who come under these classes may prefer a charge before the Provincial Synod, but must first lodge Ancient system of Synodical trial. in writing their admission of the like penalties against themselves, in case they prove not their charge. When the Provincial Synod fails to settle the case, recourse is to be had to *a fuller Synod in the same Province*. Or, as the word 'Diocese' here employed embraced a cluster of provinces in the Roman empire, (as e.g. Spain, France, and South Britain formed the 'Diocese of the Gauls,' Italy and North Africa that of 'Italy,') a National Synod would now best represent it.

And here note, that whereas the Council of Sardica had previously to "honour the memory of S. Peter" accorded the right of Appeal to the Bishop of Rome, or to judges appointed by him; and whereas a law of the emperor Gratian had ordered a Metropolitan appealing to resort to Rome, the said Second General Council takes no notice

of the same; and its authority as Oecumenic must be held more binding.

In the case of the Pope himself, it transpires from the Council of Rome under Damasus A.D. 378, that Pope Silvester being accused pleaded his own cause before the emperor Constantine. Yet that, I conceive, must have been in a matter, of which civilians might take cognizance.

§ 3. A Council held at Constantinople A.D. 394, at which the Eastern Patriarchs were present, decided that Number and quality of the judges. in order to depose a bishop all the compatriots should assist, *if possible*, and the accused be present.<sup>1</sup> The Council of Antioch (can. 14,) ordains that where in a trial involving criminal charges the bishops are divided in regard to the guilt or innocence of the accused, a neighbouring Metropolitan and some bishops are to be summoned to assist. Ordinarily, *twelve* bishops, beside the Metropolitan, ought to be present at the trial of a bishop; *six*, at that of an archdeacon or priest; *three*, at that of a deacon. In such cases the bishops sit, not merely as assessors to the Metropolitan, but also as ordinary judges.<sup>2</sup> Though a Metropolitan might not remove a suffragan from his administration, yet he might excommunicate or suspend him.<sup>3</sup> In the Middle Ages, a Provincial Council might indeed take cognizance, but had to refer the decision of the cause, as touching condemnation, to the Pope.<sup>4</sup>

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## CHAPTER XXXII.

### OF THE TRANSLATION OF BISHOPS.

THE translation, not only of bishops, but also of priests and deacons, from one *city* (once nearly synonymous with

<sup>1</sup> Fleury, H. E. L. XIX. c. 51.

<sup>2</sup> Archidiaconus *sup. Deec.* f. 157. Founded on canon 11th of the First Council of Carthage.

<sup>3</sup> Philippus Francus super Sext. Decretal. f. 88. Lugduni, 1522.

<sup>4</sup> Archidiac. f. 164.

*diocese*) to another, is strictly forbidden by the Council of Nicaea (canon 15.) That of Antioch (canon 21,) cuts off all excuse, whether of the importunity of the people or constraint imposed by bishops, (in England it would have been ‘the will of the sovereign’;) and orders the bishop to remain in the church, which God had originally given him. But the reason given by the Nicene Synod for their stringent measure explains why the Church in after ages thought not fit to retain it. It was “because of the great troubles and seditions that have come to pass.” “Never was it found that a bishop got translated from a greater to a lesser see,” remarked Hosius at the Council of Sardica; “so it is plain, that they are actuated by avarice or ambition.” The reason ceasing, the force of the canon is impaired. Yet the best men, such as Bishop Wilson of Sodor and Man, have chosen to regard it.

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### CHAPTER XXXIII.

#### OF THE RENUNCIATION OF BISHOPS.

ORDINARILY it doth not become a bishop to resign his see. Six cases however occur, when he may seek leave to do so.

1. When his conscience charges him with such sin as may hinder the execution of his office, were he to do penance.
2. Sickness or old age, whereby he is rendered unable to fulfil the pastoral office.
3. On account of lack of competent knowledge of spiritual things, (*not* the eminent degree desirable in a bishop,) and of skill to deal with the temporalities.
4. When his people are incorrigibly disobedient, and their correction admits not of easy remedy.
5. To avoid some grievous scandal which may not otherwise be allayed.
6. On account of personal irregularity, as when a bishop is twice married (*bigamus*), or the husband

of a widow.<sup>1</sup> A bishop, who has resigned his see but not his dignity, may, if invited by a Diocesan, confer Holy Orders.<sup>2</sup>

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## CHAPTER XXXIV.

### OF BISHOPS CO-ADJUTORS AND SUFFRAGANS.

§ 1. THE Canon Law favours the appointment of a co-adjutor or assistant-bishop (in case of the hopeless infirmity of the diocesan,) with right of succession to the see, rather than that of a suffragan, who Bishops. can act only during the diocesan's pleasure.<sup>3</sup> If a bishop by reason of old age or disease cannot execute his office, he may, with advice of his chapter, assume to himself one or two co-adjutors, by Papal (now in England, by Royal) authority. If he be out of his mind and cannot express his wishes, the chapter may obtain a coadjutor. If an infirm bishop, though requested, decline their advice, he cannot be compelled; but the chapter is to report the circumstances to the See Apostolic [or to the Crown, or other recognized supreme authority.] The co-adjutor is to receive a moderate maintenance out of the revenues of the bishop, whose assistant he is.<sup>4</sup> He does not use the pastoral staff, save in ordinations.<sup>5</sup> Nor is he a Prelate, because he acts as a delegate.<sup>6</sup> His office expires on the death of his employer. What if the diocesan were to recover his health, could he dismiss the coadjutor? Hugo Catalanus says, No, but believes that in ruling the church the latter ought to *preside*, not however without

<sup>1</sup> Decret. Greg. I. Tit. IX. c. 10. The displeasure of Queen Elizabeth against Fletcher bishop of London for marrying a rich young widow drove the poor man to the immoderate use of tobacco, which caused his death. As for bigamy or rather *digamy*, I see no bar to a bishop's being as well (or ill) married as Henry VIII. The Church now leaves it to Public Opinion.

<sup>2</sup> Ibid. Tit. xiii. c. 1.

<sup>3</sup> II. Decret. Caus. VII. qu. 1. c. 17.

<sup>4</sup> Sext. Decret. III. Tit. V.

<sup>5</sup> Gavanti, Manuale Episcoporum, p. 121.

<sup>6</sup> Panorm. vi. f. 50.

the counsel of the former. He says also, that on the demise of the diocesan they cannot pass by the co-adjutor and elect another; for they have less power in regard to him than they would have had, if he had been canonically elected by them after the bishop's death, and been consecrated or confirmed by the Metropolitan.<sup>1</sup>

*Of Suffragans, properly so called.* § 2. Bishops of a Province, subject to a Metropolitan, are called *Suffragans*, because they give their suffrages or assent to consecrate other bishops, celebrate Councils, and the like.<sup>2</sup>

*Suffragans of Canterbury.* § 3. The Province of Canterbury has the Bishop of London as *Dean* of the college of bishops; Winchester, *Chancellor*; Lincoln, *Vice-Chancellor*; Salisbury, *Precentor*; Worcester, *Chaplain*; Rochester, *Cross-bearer*.<sup>3</sup> They correspond almost with the

Proto-thrones of the Greek Church, as enjoying a prerogative of honour in right of their sees, without regard to priority of consecration, now restricted to the two first; the Crossbearer is taken to be Chaplain, nor does the Bishop of Worcester care to vindicate his right.

*Suffragans, improperly so called.* § 4. In England a class of bishops are styled *suffragans*, who are duly consecrated with a titular see, to act as assistants under the commission of a diocesan. They differ from Coadjutors in that they possess not the right of succession to the diocesan see; and were called into existence by the Pope-King Henry VIII. to supply the loss of the Bishops *in partibus infidelium*, by help of whom Rome had previously alleviated the charge of the English diocesans. It is uncertain whether the ancient *Chorepiscopi* or *country-bishops* were always in episcopal orders. Charlemagne denies their episcopal character, because of their not having been ordained for a see nor by three bishops;<sup>4</sup> reasons by no means conclusive.

§ 5. Bishops coming over to the Church from a schism,

<sup>1</sup> Archidiac. *sup. Decr.* f. 173.

<sup>3</sup> Lyndwood, p. 317

<sup>2</sup> Reiffenstuel, I. 390.

<sup>4</sup> Capitular. 5.

yet validly consecrated, are on their reception to profess  
 Of Bish- assent to the doctrines of the Catholic and  
 ops with- Apostolic Church. Where there is no Catholic  
 out charge, they shall have the honour of priests,  
 or dioce- unless it pleases the bishop they should share  
 san func- the honour attaching to the name of Bishop.<sup>1</sup>  
 tions.

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## CHAPTER XXXV.

### OF INFERIOR PRELATES.

§ 1. THEY are termed *Prelates* that have jurisdiction, whether by common law, or by custom. Curates, that is, Who so clerks holding a pastoral charge, are not com- styled? prehended under the appellation of Prelates. Strictly speaking, this is true; not so, when the term is taken in a large sense.<sup>2</sup> Where a parish priest is so styled,<sup>3</sup> he had jurisdiction by prescription or privilege, not by common law; for it is certain that a parish priest is not the Judge ordinary of his parishioners *in foro contentioso*.<sup>4</sup>

§ 2. By 'Vicar General' is meant one who is appointed by the bishop with general power to represent him where Of the he hath his see and judicature. In virtue of his Vicar office he can take cognizance of all causes belonging General. to the episcopal jurisdiction, such as require not a special commission; so that a presumption lies in his favour, until it be shewn from law or custom, that the case is a special one. His tribunal is identical with the bishop's, so that there lies no appeal from him to the bishop.<sup>5</sup>

§ 3. It belongs to the Archdeacon as *the Bishop's eye* to correct and amend throughout the diocese such matters Of the as require not the presence of his superior. He Office of is the Bishop's Vicar, and as such is charged Arch- deacon. with oversight of the conversation and doctrine

<sup>1</sup> I Council of Nicaea, can. 8.

<sup>2</sup> Panorm. VII. f. 310.

<sup>3</sup> See a Decretal of Pope Alexander III. ap. Decr. Greg. I. Tit. xxxi. c. 3.

<sup>4</sup> Panorm. II. f. 111.

<sup>5</sup> Reiffenstuel, I. 356, 8.

of the clergy, the dealing with delinquents, and the restoration of churches. To him belongs the examination and presenting of clerks to be ordained, [the installation of abbats and abbesses,] the corporal institution to benefices, and (of right) the appointment and removal of Rural Deans in common with the bishop.<sup>1</sup> His vicarious power extends not to the greater titles, such as collegiate churches, unless he acquires this by custom. Let the bishop then beware, that he permit not the archdeacon to use this power so long as to complete prescription.<sup>2</sup> Looking to the administration incumbent on them by law, the Archdeacon is the Bishop's *Vicar born* in temporals, the Dean in spirituals.<sup>3</sup>

§ 4. The origin of Archidiaconal visitations is traceable to the Fourth Council of Toledo, A.D. 633; which Of Archidiaconal visitations. ordains that if the bishop be ill or otherwise occupied, he should send yearly throughout his diocese approved priests or deacons, to inquire touching the revenues and repairs of the churches and the conversation of the ministers.<sup>4</sup> This visitation of the archdeacon is properly called Scrutation or Inquiry; unless by local custom he may correct lighter matters.<sup>5</sup> In law he has not the right of visiting, unless the bishop is unable; and then only every third year.<sup>6</sup> If he should come to lose by custom the right of visitation which by custom he originally acquired, the Bishop can visit, though he may have long intermitted the action; for his jurisdiction is not limited by his mere forbearing to visit.<sup>7</sup>

§ 5. The office of Archpriest, who by most persons is styled Dean,<sup>8</sup> is to overlook the priests of the cathedral church, and principally to celebrate in the Bishop's

<sup>1</sup> I Decret. Greg. Tit. xxxiii. capp. 1, 7, 8.      <sup>2</sup> Panorm. II. f. 68.

<sup>3</sup> Reiffenstuel, I. 349.

<sup>4</sup> Decret. II. Caus. X, qu. 1, c. 11.      <sup>5</sup> Bohic, *sup. Decret.* I. f. 47.

<sup>6</sup> Innocent. *sup. Deer.* f. 46.

<sup>7</sup> Panorm. II. f. 69.

<sup>8</sup> Decret. Greg. I. Tit. xxiii. c. 7. From the perfection of the number ten, any one who presides over other priests is styled *Dean*. (Reiffenstuel, I. 349.)

place ; and so he is in the divine service his vicar.<sup>1</sup> As far as regards dignity, he was inferior to the Archdeacon of the office of Arch-priest. and subject to his jurisdiction. According to the Roman Order he was next to the Bishop, and his Vicar. But that may be explained by the peculiar dignity attaching to the chief priest of the Imperial City. In Spain and elsewhere it was otherwise. Yet the Roman example has prevailed. By the celebration above alluded to is meant the Eucharist on solemn festivals, when the Bishop ought to be present in the cathedral church, unless he be reasonably hindered.<sup>2</sup>

In the Anglican Church, as reformed, where the Prophetic or teaching aspect of the Ministry so largely predominates over the Priestly, the office of Dean has hitherto been ornamental rather than has formed an essential feature of the Church's work. The same may be said of the Precentor, the *Primicerius* or 'first-taper-bearer' of ancient times ;<sup>3</sup> whose importance, as well as the Dean's, presupposes a high and reverend esteem of the Divine Office and Ritual, hardly to be witnessed in our midst. Therefore, and because of its closer connexion with Jurisdiction, I have chosen to set the office of Archdeacon in its ancient place.

Of Rural Deans. § 6. Rural Deans have no *ordinary* right, like beneficed priests, but simply what they derive from the episcopal commission.<sup>4</sup>

## CHAPTER XXXVI.

### OF THE RELATIONS OF BISHOPS AND CHAPTERS.

§ 1. A CHAPTER may not without the bishop make new customs or statutes, or change old ones. Is it then

<sup>1</sup> Panorm. II. f. 69.

<sup>2</sup> Ibid.

<sup>3</sup> Hostiensis Summa Aurea, I. col. 219.

<sup>4</sup> Van Espen, I. p. 38.

The action  
of Bishop  
and Chap-  
ter, how  
indepen-  
dent?

bound to have the bishop's consent in all cases? Innocent IV. saith, that the consent of the bishop is required, if the chapter would enact in his name, or touching his right, or in great or arduous matters: otherwise, touching inferior matters belonging to the chapter. On the other hand, as in exercising jurisdiction the bishop is not bound to get the chapter's consent, but their counsel is sufficient; so in framing statutes their consent is not regularly required; but it ought perhaps to intervene on arduous subjects. Panormitan holds the two positions not to be of equal weight; "for the enactment of a statute is something distinct from the exercise of jurisdiction, and more arduous; for statutes are certain and perpetual, but jurisdiction varies according to seasons."<sup>1</sup> At the same time he states, that "so great is the bond between Bishop and Chapter, that they form one body; and a clerk ought to be bound by his oath to obey the bishop as the head and the canons as the members."<sup>2</sup> Though it is held, that a bishop should exercise jurisdiction without advice of his chapter, "at the present day," observes Panormitan, "I suppose through the ignorance of the Canons, the Bishops have prescribed against them, so as alone to exercise jurisdiction; and such prescription or custom avails."<sup>3</sup>

§ 2. The majority of a Chapter may impose a payment on all its members against the opposition of the minority; as, for instance, to pay a necessary debt. The latter cannot refuse a burthen imposed by the former; as regards the stipend, which every Canon receives from the church, the repair of whose fabric is designed.<sup>4</sup>

§ 3. On this point canonists and legists greatly differ. For, according to Bartolus, whom common practice follows, it is not enough that the general body be sum-

<sup>1</sup> Tom. I. ff. 101, 102.

<sup>2</sup> T. VII. f. 286.

<sup>3</sup> Ibid. f. 76.

<sup>4</sup> Petrus de Ancharano, f. 49. Decr. Greg. III. Tit. xi. c. 4.

moned, but two parts thereof must necessarily be present. But the canonists commonly distinguish : either there is Cases in some one whose business it is to call together the which a general body ; and then, if all do not come at his minority may act. mandate, they that come may transact business ; as the summons by the superior renders those that do not come contumacious, and so deprives them of the faculty of voting. Or there is no superior to summon ; and in that case, if a term be fixed for the act of the general body, the minority may proceed to business, if the majority neglects to appear. If no term be fixed, two parts of the whole body must be present, and monish the third part. "This opinion of the canonists I think the truer one," adds Panormitan.<sup>1</sup>

Canons  
may not  
exchange  
houses  
without  
the  
Bishop's  
leave.

§ 4. On the ground that churches may not exchange property without leave of their superior, it is argued that Canons also may not exchange the houses assigned them as Canons, without the Bishop's leave.<sup>2</sup>

## CHAPTER XXXVII.

### OF THE EXAMINATION OF CLERKS.

§ 1. Whereas the direction of souls is the greatest skill of all, Bishops should carefully instruct, personally or otherwise, those whom they shall ordain priests, in the Divine Service and Administration of the Sacraments. For it were better that the Church had a few good Ministers than many bad ones.<sup>3</sup> To discharge the burthen laid upon the bishop, it was ordained that grammar schools for the gratuitous instruction of poor scholars should be set up by every

<sup>1</sup> Tom. I f. 22.

<sup>2</sup> Panorm. VI. f. 73.

<sup>3</sup> Fourth Council of Lateran, can. 27.

Cathedral Body ; and in the Metropolitical See a theologian to teach the Scriptures and what relates to the cure of souls.<sup>1</sup> It was Thorndike's opinion that the erection of Universities in Western Europe caused the disuse of the ancient episcopal seminaries for the training of clerks. Though the Universities (he thought) offered "a far shorter way to the knowledge of the Scriptures, *the canons*, and the rites and customs of the Church, it was the way also to lose that gravity and sobriety, upon which the credit of the clergy with the people had been raised."<sup>2</sup>

§ 2. Nearly the same order is observed in the examination of priests and deacons, as in that of bishops.

*Conditions of Ordination.* The bishop is to choose priests and other prudent men, acquainted with the Scripture and the decrees of the Church, who are to examine the candidates, if they be well learned, if taught in the Law of the Lord ; above all, if they firmly hold the Catholic Faith, and *can assert it in simple words*.<sup>3</sup> When the Archdeacon in presenting a candidate saith he is worthy, it means so far as human infirmity allows him to know ; presuming him worthy whom he knows not to be unworthy.<sup>4</sup>

No bishop should ordain a clerk without the advice of his priests and the implied assent of the people.<sup>5</sup>

§ 3. Bishops are forbidden to exact oaths or engagements of obedience which ensnare the conscience.<sup>6</sup> The nature and extent of canonical obedience require authoritative explanation, so that it be not the plaything of despotic prelates or of refractory priests.

§ 4. *Bigamists*, (*i.e.* persons who have been twice married,) *penitents*, (*i.e.* persons subjected to *open penance*,) or *husbands of divorced women*, must not rise to the priest-

<sup>1</sup> Decret. Greg. V. Tit. V. ch. 4.      <sup>2</sup> Just Weights, &c. ch. xxiv. § 5.

<sup>3</sup> Council of Nantes, can. 11. A.D. 658. I. Decret. Dist. 24. c. 5.

<sup>4</sup> Fourth Council of Lateran, can. 27.

<sup>5</sup> Fourth Council of Carthage, can. 22.

<sup>6</sup> Council of Châlons, can. 13. A.D. 813.

hood.<sup>1</sup> Nor bastards, nor slaves, nor such as have suffered Who to be bodily mutilation; save, in the last case, the excluded from loss of a thumb or finger, not hindering the Orders. *fraction* of the Eucharist, is no bar.<sup>2</sup>

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## CHAPTER XXXVIII.

### OF THE SPIRITUAL CAPACITIES OF CLERKS.

§ 1. A BISHOP ought not to let a day pass without saying or hearing Mass, unless he be reasonably hindered.<sup>3</sup> Their obligation to Divine Service. The Council of Sardica, while limiting a bishop's stay on his property (outside his diocese) to three weeks, "to the end he pass not a Sunday without resorting to church," ordains he should officiate in the nearest church at hand (can. 15:) which implies the right of sharing in church functions, not the duty of assisting therewith as a layman. Bishops or priests coming to a strange church shall preserve their rank, and be asked to preach and celebrate.<sup>4</sup> Priests without cure of souls are not bound to celebrate on every Lord's day and festival.<sup>5</sup> They, as well as laymen, ought to resort to their parish church to hear Divine Service;<sup>6</sup> and rank as laymen, as far as relates to receiving the sacraments.<sup>7</sup> Panormitan infers from this, that clerks hearing Divine Service in churches not their own are bound to make oblations, where lay parishioners do; and this makes against the common saying, *Non solvit Ecclesia*. That opinion holds only in their own churches, where they themselves minister.<sup>8</sup>

<sup>1</sup> Third Council of Orleans, can. 6.

<sup>2</sup> I Decret. Greg. Tit. xviii. c. 5. Tit. xx. c. 7.

<sup>3</sup> Panorm. VI. f. 3.

<sup>4</sup> Fourth Council of Carthage, can. 33. A.D. 398.

<sup>5</sup> Panorm. VI. f. 3.

<sup>6</sup> Ibid. II. f. 111. Decret. de Consecratione, Dist. I. c. 52.

<sup>7</sup> Panorm. II. f. 133.

<sup>8</sup> Ibid. f. 143.

§ 2. Every priest, upon his ordination, hath the power of binding and loosing, (that is, of Jurisdiction *in foro* Restricted *poenitentiali* and of Administration;) yet he hath by the Parochial not the actual exercise thereof, when he is not System. in charge of a congregation. But before parishes were marked out, he had it in habit and in act.<sup>1</sup> The development of parishes served to obscure the idea of the inherent powers of the Priesthood. From the twelfth century in France, and presently in England, Rectors of churches were termed *Parsons*, that is, the *Persons* or representatives of the Church in their parishes.<sup>2</sup> The faculties, granted by the Pope to priests of the Preaching and Mendicant Orders, despite of the abuses that attended their exercise, served to rectify the balance. ‘The vested rights of Incumbents’ sometimes imply no less than the power of an unworthy nominee of careless Patrons to stifle the spiritual life of a parish during the period of his wretched Incumbency. Stipendiary priests, that is, curates, chaplains &c. or any other, who live upon their own means, yet celebrate by episcopal permission, are required by a constitution of Archbishop Winchelsey A.D. 1305, to be present in the chancel, *not the body of the church*, at Divine Service in surplices purchased at their own cost, and to join in reading, singing, and psalmody.

§ 3. A bishop may preach always and everywhere, unless he be inhibited by him whose diocese he enters. Their duty He may do so, when the diocesan knows not as to of it, or knows yet gainsays not; but not against preaching. his will. Any curate may receive another in his church to preach, if known and competent; understand, occasionally and out of civility.<sup>3</sup> And let the priest beware how in his preaching he begin to reveal holy mysteries to the unworthy or unintelligent. For he that

<sup>1</sup> Panorm. I. f. 13.

<sup>2</sup> Card. Zabarella, *super III. Decret.* f. 56. II. Decr. Caus. I. qu. 3. c. 4. In Provence they were called *Priors*, in the Terra di Lavoro *Abbots*.

<sup>3</sup> Petrus de Ancharano, *sup. Deer. Greg.* V. Tit. VII. f. 87.

teacheth what his hearers cannot understand doth so out of ostentation, not to their profit.<sup>1</sup>

§ 4. For a church to be collegiate, it suffices not that there be many clerks in it; unless they be constituted as What constitutes a Collegiate Church? one Body, and have a common chest and common property.<sup>2</sup> It is not essential to a college, that there be a *prelate* or superior over it.<sup>3</sup> Ordinarily one only ought to have the *cure* or pastoral charge of souls; but if there be many curates in a church, they are not the *Prelates* or spiritually wedded to the parish (*sponsi*), but the bishop or other is their superior; and if they have not a prelate, then the college or community is their superior.<sup>4</sup>

§ 5. If a priest be removable at the pleasure of a college or chapter, he has not properly the *cure* of souls.<sup>5</sup>

Of Perpetual Curates or Vicars or Vicars. Perpetual or not removable Curates or Vicars are bound to reside at their churches, and having the cure of souls must be priests.<sup>6</sup> They exercise their charge independently of the Rector, who cannot interfere with them any more than the Bishop can assume the charge of a parish against *his* will.<sup>7</sup>

## CHAPTER XXXIX.

### OF THE CONTINENCE OR CELIBACY OF CLERKS.

§ 1. THE design of the Law of clerical Continence was to secure sacerdotal purity; that, as S. Paul requires the use of wedlock to be forborne for extraordinary devotions, they, whose ordinary devotions ought to be extraordinary in comparison of the people, be such as forbear it always.<sup>8</sup> The example of the

<sup>1</sup> I. Decret. dist. 43.

<sup>2</sup> Henric. De Bouhic, II. f. 77.

<sup>3</sup> Zabarella, f. 27.

<sup>4</sup> Ibid.

<sup>5</sup> Innocent. *sup.* Decr. Greg. III. Tit. V. c. 15.

<sup>6</sup> I Decret. Greg. Tit. XXVIII. c. 6. Honorius III. to the Bishop of Worcester.

<sup>7</sup> Petr. De Ancharano, *sup.* Decr. Greg. III. Tit. V. c. 33.

<sup>8</sup> Thorndike, Epilogue, III, c. xxxii. § 28.

Levitical priests departing not from God's House during their course of service was used to enforce a higher standard of abnegation among ministers of the Gospel.<sup>1</sup> The plea was specious ; but it converted a counsel of perfection or a temporary rule into an absolute law, binding on a numerous class, at what risk shall be presently shewn.

§ 2. It was, indeed, proposed at Nicaea to enforce continence on the married clergy ; but Paphnutius, an Egyptian Not anciently bishop, himself a monk, successfully opposed the motion on the ground of inexpediency; and enforced nothing was done. Yet he at the same time declared that it was according to *the ancient tradition of the Church* for a clerk not to proceed to marriage after his ordination.<sup>2</sup> A priest, marrying after his ordination, was deposed by the canons of Neo-caesarea, A.D. 314. Even bishops were anciently in the East not constrained by law to celibacy or continence ; "for many of them even became fathers by their lawful spouses in the time of their episcopate":<sup>3</sup> while in Thessaly a custom was introduced by the *novelist* Heliodorus (Bishop of Tricca) to enforce continence on clerks married before their ordination, which was followed in Greece and Macedonia. When in England Archbishop Aelfric tried to enforce it on the Northumbrian priests, they urged that S. Peter had a wife. He replied, that on his conversion he forsook her and all that he had. This was true *for a season only*. Aelfric forgot, S. Peter or Cephas took his wife with him to Rome, where he encouraged her to suffer martyrdom before him ; a circumstance which Clement of Alexandria adduces in proof of the heroic sanctity of the Saints' wedded lives.

Much later than Aelfric, Pope Innocent III. declares that "the Eastern Church has never admitted the vow of

<sup>1</sup> Decr. I. Dist. 31. c. 4.

<sup>2</sup> Socrates, Hist. Eccles. I. 11.

<sup>3</sup> Sozomen. Hist. Eccles. V. c. 22. See the notice of S. Gregory Nazianzen in my "Sanctorale Catholicum," p. 224.

continence, since they contract in minor orders, and in the higher use matrimony already contracted.”<sup>1</sup>

§ 3. Although the Nicene Synod did not legislate touching clerks already married, yet it ruled that “bishop, priest, deacon, and clerks generally, should admit to live with them only such persons as are beyond suspicion”; enumerating mother, aunt, sister.<sup>2</sup> Even this concession had to be withdrawn.<sup>3</sup> In A.D. 888 the Council of Mayence, in view of such an enormity as incest, had no wiser remedy to propose than that a priest should not lodge with any woman whatsoever!<sup>4</sup> Bartholomew of Brescia (A.D. 1236,) wrote of clerks in his day, that “few of them were found free of the charge of incontinence.”<sup>5</sup> A graver testimony is supplied by the Cardinal-Bishop of Ostia (A.D. 1255.)<sup>6</sup> Incontinence was so common at Rome about A.D. 1311, that *Durandus* bishop of Mende proposed to the Pope to allow marriage of priests, as in the Greek Church.

§ 4. Such are some of the facts that justify the abrogation of the ancient Law of Continence or Celibacy.

Its abrogation justified. They led Panormitan to resolve affirmatively the question, ‘Can the Church at the present day determine that a clerk may contract matrimony as the Greeks do?’ Premising that “Continence is not, in secular clerks, essential to Order, nor of Divine right,” he proceeds to say, “I not only believe the power of enacting this is inherent in the Church, but that its enactment would be *for the saving of souls*. For, as experience teaches us, the downright contrary effect follows from the law of continence; since at this day clerks are

<sup>1</sup> Decret. Greg. III. Tit. III. c 6.

<sup>2</sup> Canon 3.

<sup>3</sup> Council of Angers, A.D. 453. “Quia instigante diabolo et in illis scelus perpetratum reperitur, aut etiam in pedissequis earumdem.” (Decret. Greg. III. Tit. II. c. 1.)

<sup>4</sup> Canon 10.

<sup>5</sup> Zabarella *sup. Clementin.* f. 40.

<sup>6</sup> “Communiter delinquent clericci incontinentia, quae contra naturam est, laborantes.” (Hostiensis, Summa Aurea, V. De excessibus praelatorum, col. 1337.)

stained by unlawful connexion to their grievous sin ; whereas with a man's own wife there might be chastity. Whence the Church ought to do as a good physician ; and, if a medicine upon trial doth more hurt than profit, remove it.”<sup>1</sup>

§ 5. He moreover puts the case of a married man's being elected Pope, and says : “ Either his wife shall be induced to continence ; or, if she be unwilling to contain, let him render the conjugal debt, yet nevertheless abide in the Papacy, because it is not repugnant to the essence of the Papacy or clerical state. For Peter too had a wife, when he was promoted to be Pope. Whence we see that Greek priests contract matrimony without sin.”<sup>2</sup> Elsewhere he states that such a married Pope's election would not thereby be vitiated ; but does not say that he could perform his Papal functions.<sup>3</sup> This view is supported by Gratian, who puts the case of a Deacon wishing to cease from his ministry. “ He may allowably use matrimony. For though at his ordination he may have vowed chastity, yet is there such power in the sacrament of Matrimony, that wedlock cannot be dissolved even in consequence of violation of a vow.”<sup>4</sup> In the case of monks contracting matrimony (e.g. Luther and M. Loyson,) the First Council of Orleans ordains, that they never obtain an ecclesiastical degree.<sup>5</sup>

## CHAPTER XL.

### OF THE LAWS REGULATING THE CLERICAL LIFE.

§ 1. LAWS, which say that a clerk cannot own property, express the sense of the primitive Church, when Christians had all things in common. Before benefices were set apart, the clergy could not

<sup>1</sup> Panorm. VI. f. 16.

<sup>2</sup> Ibid. I. f. 123.

<sup>3</sup> Ib. VI. f. 157.

<sup>4</sup> Decret. I. dist. 27. c. 1.

<sup>5</sup> Decr. II. Caus. xxvii. qu. 1. c. 32.

live on the revenues of the Church, if they had a sufficient patrimony. But now that benefices have been appointed, and it accords with our sentiments for a clerk to possess property of his own, later laws have emanated, allowing him to enjoy the revenues of his benefice, when he serves the same. A stipend is given a clerk for performance of service; but he is not bound to serve, when he lives on his own patrimony: which furthermore he may (contrary to primitive custom) bequeath to his heirs.<sup>1</sup>

§ 2. A bodily injury, provided it hinders not a priest from celebrating without scandal, doth not incapacitate Priests, when incapacitated? him.<sup>2</sup> In case of leprosy a coadjutor was to be assigned to the afflicted party, and a suitable maintenance allowed him.<sup>3</sup>

§ 3. S. Cyprian and his bishops pursued with penalties *after death* one who by his last will had appointed a priest guardian; on the ground that he thereby sought to turn a clerk aside from prayer and the service of the altar.<sup>4</sup> The Apostolic Canons (c. 6.) forbid men in holy Orders taking up secular concerns, or trying to combine "a Roman," that is, secular "command and a sacred administration." (c. 82.)

Yet the Byzantine canonist Balsamon, arguing from the fact that bishops allowed monks to administer not only ecclesiastical but also secular affairs, says; "But if a bishop may allow this, much more shall the Imperial authority effect it, which promotes even bishops." He instances a Metropolitan of Side, who governed in the name of the emperor Michael Ducas; and another, who wrote a code of maritime laws.<sup>5</sup> Thorndike argues on the same side, that our Lord's words in S. Matthew XX. v. 25 prove as much against the laity as the clergy, being, in fact, addressed as a moral precept binding on Christians in general. And further, that, presuming the clergy

<sup>1</sup> Panorm. VI. f. 24.

<sup>2</sup> Decret. Greg. I. Tit. XX. c. 1.

<sup>3</sup> Ibid. III. Tit. VI. c. 3.

<sup>4</sup> Fleury, Hist. Ecclés. L. VII. c. 22.

<sup>5</sup> Beveregii Synodicon, I. 117.

possessed of "the most exact knowledge and practice of Christianity," the community at large gains by their engagement in secular business. But he damages his argument, when he adds, that the sacred duties such clerks forsake may "*easily* be discharged" by members of the Cathedral bodies.<sup>1</sup> But when I reflect that Balsamon was a non-resident Patriarch of Antioch, and Thorndike a college-Fellow content with Sunday ministrations, I gather that their view of pastoral duty could not have been a sound one. Our Lord's own words, (S. Luke XII. 14,) and S. Paul's (II. Tim. ii. 4,) point to an opposite conclusion. It shocks men to find those who profess the stricter service of God eager to engage in worldly distractions. The picture drawn by Boniface VIII. of the clergy and laity divided into two hostile camps by this very engagement of the former in the business of the latter, is a warning for all time.<sup>2</sup> When we contrast the overwhelming occupations of Innocent III. and Laud with the simple devotion of S. Aidan and S. Chad, we are driven to endorse S. Cyprian's words, that "a clerk should serve only the altar and be at leisure for prayer."<sup>3</sup>

§ 4. An involuntary homicide, if fault has preceded the mischance, is irregular, and should be deposed. So

Clerks also should a priest, striking by way of discipline, if he exceed measure and if death may not fight, &c. thence ensue.<sup>4</sup> In a doubtful case, the clerk should consider himself irregular; when he is not defamed, he is to be left to his own conscience.<sup>5</sup>

§ 5. Where a war was just, the Mediaeval Church allowed priests not only to urge others to fight, but also to

Excep- be present in the action, provided they did not tional themselves fight; for their calling rendered cases. them unfit to fight even against the Saracens.

Also, when they could not save by fighting escape death,

<sup>1</sup> Right of the Church, c. V. § 31.

<sup>2</sup> See the Bull 'Clericis Laicos.'

<sup>3</sup> Epist. 1.

<sup>4</sup> Decr. Greg. V. Tit. xii. c. 7.

<sup>5</sup> Petrus De Ancharano, *sup.* V. Decr. Tit. De homicid. f. 92.

they might even fight without incurring irregularity.<sup>1</sup> A clerk never escaped irregularity save in the cases now stated.<sup>2</sup> In the East the Church was far more rigid. Balsamon mentions a bishop who was deposed, because he slew a Saracen who had drawn his sword against him in time of war.<sup>3</sup> The feudal system actually compelled clerks to violate the canons. We read of an Abbat of Fulda, "who though paralytic was forced, *as a Prince*, to attend the Sovereign in battle, and was nearly choked by the din of the muster and the dust raised and the fervent heat."<sup>4</sup> It is recorded that a Scottish invasion was successfully repelled by a body of clerks at Swale in Yorkshire in 1319; the engagement being hence known as 'The *white Battell*.' The military ardour of the clergy culminated in 1511; when Pope Julius II. besieged Mirandola, "come soldato e capitaneo";<sup>5</sup> and thus, according to Innocent III., *sinned enormously*. Henry Compton bishop of London raised a cavalry troop in 1688; and in our days Leonidas Polk bishop of Louisiana doffed his rochet to assume a military command in the army of the Southern States of America.

A German Council A.D. 742 first recognizes and allows chaplains in the army to celebrate and hear confessions.

§ 6. All things, attended by bloodshed, are forbidden to Clerks may not be present at, nor judge in, causes of blood. clerks. A clerk may not pass a capital sentence, nor do aught that tends to capital punishment. It was a flimsy distinction, which forbade him to exercise secular jurisdiction in the name of the Sovereign, but allowed the same, if annexed to his dignity. As if he were forced to accept

<sup>1</sup> Panorm. VII. f. 245. Founded on a Decretal of Innocent III. to the Archbishop of Drontheim, relating to the practice of some Norse priests, such as Thangbrand in Icelandic annals. His words are: "For, whereas as well priests who command war-ships as they who personally engage in the combat, and they who urge others to fight, all of them sin enormously; we believe that in canonical strictness they should be deposed." (Decr. Greg. V. Tit. XXXVII. c. 5.)

<sup>2</sup> Panorm. VI. f. 242.

<sup>3</sup> Bevereg. Synodic. II. 101.

<sup>4</sup> Annales Lamberti Hersfeld. *sub anno* 1075.

<sup>5</sup> Costanzo Felici.

what violated the Church's law.<sup>1</sup> Thus, the Bishop-Palatine of Durham sat in court in his purple robes, and gave sentence of death. Hence the saying, '*Solum Dunelmense judicat stola et ense.*'<sup>2</sup> In consequence of the general principle clerks were forbidden to perform surgical operations.<sup>3</sup>

§ 7. Ebriety not being the prevalent form of intemperance among the natives of the South, we find little said of it in the old canons. While the Apostolic canons merely say that the clergy must desist or be certainly condemned, the Council of Agde orders a drunken clerk to be separated from communion thirty days, or *be flogged*.<sup>4</sup> Upon the admission of the northern tribes into the ranks of the clergy, prohibitions of the kind become more frequent.<sup>5</sup> The ministers of the altar should not be agents, or buffoons, or gamesters, or lovers of good cheer, or of unbecoming ornaments.<sup>6</sup>

§ 8. All excess or levity in costume is forbidden to the clergy. The Lateran Council under Innocent III. interdicts the gay colours of red and green; that of Vienne under Clement V. fulminates against the parti-coloured fashions of the fourteenth century. "No certain teaching can be laid down," observes Cardinal Zabarella. "Each province abounds in its own sense. But extremes should be avoided, so that the dress be neither too costly nor too mean; yet we should incline to the humble rather than the splendid."<sup>7</sup> English clerks were then observed to wear *broadcloth*,<sup>8</sup> while those of Burgundy wore

<sup>1</sup> Decr. Greg. III. Tit. L. capp. 3, 10.

<sup>2</sup> Gibson's Additions to Camden's Britannia, col. 781.

<sup>3</sup> Panorm. VI. ff. 238, 241.

<sup>4</sup> Canon 41.

<sup>5</sup> "Boni socii volunt se excusare per glosam Joan. xxxii. q. ii. Moyses, *sup. verbo* 'in sicco'; ubi dicit, "quod est argumentum pro Normanis et Anglicis et Polonis ut possint fortiter bibere, ne anima eorum habitat in sicco." (Henric. De Bouhic, II. f. 3.)

<sup>6</sup> Council of Mayence, c. 30.

<sup>7</sup> Super Clementin. III. Tit. i. c. 2.

<sup>8</sup> "Sicut patet in clericis Anglicanis, qui *pannos optimos* portant, et Burgundis, qui *vilissimos*," f. 83.

the poorest. The prohibition of red and green, Zabarella supposes, arose from the fact of their use in pontifical vestments, or because they are more allied to vanity. Yet in his day the clergy used dark green in the Court of Rome; and the Pope always wore red, except in the octave of Easter when he was in white. Cardinals also frequently wore red.<sup>1</sup> By the Act 24 Henric. VIII. c. 13, it is provided that dignitaries of the Church, Doctors and Bachelors in Divinity, and Doctors in other sciences, may wear “cloth of the colour of scarlet, murry, or violet, in their gowns and sleeveless coats.”<sup>2</sup>

Nor yet do the canons regulate the costume only, but also the *manner* of a clerk. He should show the maturity of his mind in the gravity of his gait, nor fall under the imputation of levity.<sup>3</sup>

§ 9. Before the Church was endowed, clerks were not debarred from procuring a subsistence by trade or agriculture;<sup>4</sup> yet they were forbidden to frequent fairs and markets,<sup>5</sup> or to be contractors or agents, or to seek support by any base or disreputable employment.<sup>6</sup> Rural work is not forbidden them.<sup>7</sup>

Games at cards, dice &c. forbidden to Clerks.

§ 10. The canons are uniformly severe on games of chance. Excommunication followed play for money, even in case of laymen.<sup>8</sup> But the courtly spirit of the French in relaxing is early noted.<sup>9</sup>

§ 11. There are many pursuits, which can scarcely or not at all be followed without sin. Very seldom then, and by way of recreation, not otherwise, are clerks permitted

<sup>1</sup> *Super III. Decretal. f. 6.*

<sup>2</sup> Gibson's Codex, I. p. 168.

<sup>3</sup> I Decret. dist. 41. Gratian follows Aristotle in his sketch of the man of native dignity of character, and Sallust in his strictures on Catilina.

<sup>4</sup> Fourth Council of Carthage, can. 52.

<sup>5</sup> Council of Elvira, c. 18.

<sup>6</sup> Third Council of Carthage, c. 15.

<sup>7</sup> Decr. Greg. V. Tit. xii. c. 8.

<sup>8</sup> Council of Elvira, c. 79.

<sup>9</sup> “Non obstante consuetudine Gallicorum, qui sub quâdam curialitatis imagine consueverunt hujusmodi vitium palliare.” (Hostiensis, *Summa Aurea*, col. 1338.)

to hunt.<sup>1</sup> Fishing is allowed, hunting in general forbidden. And the reason perhaps is this; because the one is attended with clamour, the other is quiet. Clerks may then sometimes hunt, even though they be Prelates; provided they go not out with dogs or hawks, when they ought to visit and preach.<sup>2</sup> It appears that Bishop Jewell kept hounds for his guests, though he himself never went out hunting.<sup>3</sup> Bulstrode Whitelocke relates of Archbishop Juxon, that “he was much delighted with hunting, and kept a pack of good hounds.”<sup>4</sup> The virtue of our times condemns the manly sport of hunting in the open country, yet smiles on the elegant frivolity of *croquet* on a lawn.<sup>5</sup>

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## CHAPTER XLI.

### OF THE TRIAL OF CLERKS.

§ 1. In the early times of the alliance of Church and State, such was the reverence, which the sanctity of the clergy procured them, that though in civil causes a clerk was convented before a civil judge, in criminal causes he was not convented save before a Bishop; unless being found incorrigible and degraded he were remitted to a civil court. Even in civil causes, the Theodosian Code permits the plaintiff or defendant, at any stage of the trial up to the moment of pronouncing judgment, to appeal to episcopal audience.<sup>6</sup> But a law of Gratian, while remitting questions of religious observance to the Diocesan

<sup>1</sup> “Putarem tamen eos non multum peccare, si rarissimè hoc facerent causâ recreationis; vel causâ necessitatis, puta, ut excitarent appetitum propter morbum praecedentem.” (Panorm. VII. f. 187.)

<sup>2</sup> Hostiensis, *Summa Aurea*, V. coll. 1315, 16.

<sup>3</sup> Zurich Letters, second series, Letter 39. p. 86.

<sup>4</sup> Memorials, *sub anno* 1635.

<sup>5</sup> ‘Lothair’ makes “one or two young curates in cassocks”! attend at *croquet*.

<sup>6</sup> Lib. XVI. De Episcopali judicio.

Hunting  
&c. how  
permitted  
to Clerks.

Synods, reserves *criminal procedure* to the civil authorities, that is, the judges ordinary or extraordinary and “the *Illustrious Powers.*”<sup>1</sup> In the trial of a clerk, a bishop’s sentence *in camerá*, without the presence of his clergy, was null and void. The priest or clerk was to be presented for judgment to a Synod.<sup>2</sup>

§ 2. If a priest be ill reputed of by his parishioners, and the bishop cannot obtain proof by legal witnesses, let the Rules respecting the same. priest be suspended till he makes worthy satisfaction, that the people be not scandalized, and other priests take license to sin. The satisfaction required is, that he take seven other priests and swear to his innocence on the holy Gospel.<sup>3</sup> But before suspension there should intervene private monition by the bishop, then monition in presence of witnesses, then public rebuke.<sup>4</sup> Mere ill repute, without evidence, is not enough to condemn a clerk.<sup>5</sup>

Causes of deposition. § 3. Casual homicide, coupled with anger, subjects a clerk to deprivation; but where it is purely accidental, or unavoidable as in case of siege, he is allowed by dispensation to retain his order.<sup>6</sup> It will be remembered, that Archbishop Abbot, having rendered himself irregular by accidental homicide, was deprived of the exercise of his Metropolitical functions by the King, acting in virtue of the Supremacy transferred from the See of Rome to the Crown. The powers were given to a Commission of Bishops. They who have been publicly detected in perjury, theft, or fornication, or the like, should fall from their degree; for it is a scandal to the people of God to have such persons set over them as are beyond measure vicious. But if one secretly confesses having done such sins, before God and the priest, and strives to purge himself by prayer, fasting, and alms, the

<sup>1</sup> XVI. Cod. Theodos. Tit II. De Episcopis.

<sup>2</sup> II. Decret. Caus. XV. qu. 7. c. 6.

<sup>3</sup> II. Causa II. qu. 5. capp. 13, 16.

<sup>4</sup> Ibid. III. Tit. II. c. 8.

<sup>4</sup> Decr. Greg. V. Tit. xxxiv. c. 2.

<sup>6</sup> I. Decret. dist. 50. c. 37.

hope of pardon by God's mercy is to be promised him, even retaining his degree.<sup>1</sup>

*Fornication* is taken generally for any mortal sin. If it be secret, it is abolished by penance only; if notorious, then, provided the clerk in such a plight intermeddles not with Divine Service, the bishop may dispense with him touching the execution of his office.<sup>2</sup>

§ 4. By the sixth canon of the Second General Council (of C. P.) no heretic, separatist, or criminous person is admissible to prefer a charge of ecclesiastical offence against a Bishop. By like reason, nor Who are to be accusers? against a clerk. A bishop violating this rule seems to claim an odious exemption for his own Order.

§ 5. In case of degradation for heresy, when the number of bishops appointed for that purpose, that is, *six* in case Who, judges? of a priest, *three* for a deacon, cannot easily meet, the diocesan alone may degrade, with aid of others, prelates and religious and literate persons of the diocese.<sup>3</sup> The latter seem to hold the place of the bishops in the examination and decision, because they are substituted in their room.<sup>4</sup> The Diocesan can (without assessors) degrade clerks not in holy orders.<sup>5</sup>

Clerk not to be put to open penance. § 6. If a priest or deacon be convicted of any grievous offence necessitating his removal from the ministry, he is (according to ancient discipline) *not* to be subjected to penance and imposition of hands as a layman.<sup>6</sup>

Ad interim condition of a deprived Clerk. § 7. If a bishop, by reason of anger or precipitation, be bent on getting rid of a clerk, the innocent party has the power of appealing to a synod of neighbouring bishops; and the sentence of deprivation is to be approved or amended by

<sup>1</sup> Rabanus, *ap.* I. Decr. dist. L. c. 34.

<sup>2</sup> Bohic, *sup.* *Decret.* I. f. 46.

<sup>3</sup> Sext. *Decretal.* V. Tit. II. c. 1.

<sup>4</sup> Petr. De Ancharano, *sup.* *Sext. Deer.* L. V. Tit. II. c. 1.

<sup>5</sup> *Ibid.* Tit. ix. c. 2.

<sup>6</sup> Fifth Council of Carthage, can. 11.

the majority. Meanwhile the deprived is not admitted to communion.<sup>1</sup>

§ 8. A clerk degraded and deprived of his benefice, and restored by sentence to his Order, is not thereby restored to his benefice; just as a person, His condition upon restoration. banished by his sovereign and restored to his dignity, is not thereby restored to his property.<sup>2</sup>

The restitution of one man doth not take away the right acquired by another.<sup>3</sup> As symbolism developed in the Church, it was ruled that clerks on being restored could not enter afresh on their functions, without receiving the ensigns of their rank as at Ordination; if a bishop, the stole, ring, and staff; if a priest, the stole and chasuble; if a deacon, the stole and albe; in like manner, the lower Orders.<sup>4</sup>

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## CHAPTER XLII.

### OF THE ORDINATION OF DEACONS.

WHEN a deacon is ordained, let the Bishop alone, who blesses him, lay his hand on his head; for he is not consecrated to the priesthood, but to the ministry.<sup>5</sup> Deacons may not *offer*, that is, celebrate the Eucharist;<sup>6</sup> nor communicate before priests, nor sit among them.<sup>7</sup> The chief function of the primitive Deacon, that is, to dispense the oblations of the faithful, has long ceased. The modern Deacon is a mere probationer priest.

<sup>1</sup> Council of Sardica, can. 17.

<sup>2</sup> Petr. De Ancharano, *sup. Sext. Decr.* L. I. Tit. III. c. 8.

<sup>3</sup> Ibid.

<sup>4</sup> Fourth Council of Toledo, A.D. 633, can. 28.

<sup>5</sup> Fourth Council of Carthage, can. 4. I. Decr. dist. 23. c. 11.

<sup>6</sup> Council of Arles, can. 18.

<sup>7</sup> First Council of Nicaea, c. 18.

## CHAPTER XLIII.

### OF THE MINOR ORDERS.

§ 1. CANONISTS recognized four inferior Orders, not intituled ‘Holy,’ to wit, Acolytes, Exorcists, Readers, Ostiaries. To whom were sometimes added Acolytes, Singers or Chauntors, who might be appointed Readers, solely by a priest. The three last appear to Ostiaries. imitate David’s constitution of singers and door-keepers: in the order of Exorcists we have a tradition of the time of Solomon, whom the East universally regarded as possessing dominion over demons and the supernatural world. We may see by the attempt of the sons of Scaeva, and our Lord’s question, “By whom do your children cast them out?” (S. Matthew XII. 27,) that the Jews had exorcists. These Orders have been dropped, not abolished, in the Church of England. The order of Acolytes, (that is, *Attendants,*) has survived obscurely under the homely name of Parish-Clerks. That of Exorcists, (that is, they who conjure evil spirits out of possessed persons,) need not have been obnoxious to the Reformers; seeing Bishop Jewel, writing in 1559, complained that in the West of England “the number of witches and sorceresses had everywhere become enormous.”<sup>1</sup> The reason of the disappearance of the Minor Orders may be owing to the spoliation of the Church by Queen Elizabeth and the consequent impoverished rendering of Divine Service. But the Book of Common Prayer retains sedulously their tradition; speaking, as it does, of ‘clerks’ (*not* ‘clerk’) and of “one of the ministers” in the rubrics of the various Offices.<sup>2</sup>

§ 2. By common law the appointment of a clerk rests

<sup>1</sup> Zurich Letters, Vol. I. p. 44, *ed.* Parker Society.

<sup>2</sup> The Welsh Prayerbook makes the meaning perfectly clear, by employing for ‘clerks’ the term *yscolheigion*, that is, the *schools* (*scholae*) which we find in the old *Cursus Romanus*.

with the Parish-Priest; because the clerk ministers to him in his functions. The office is traceable to Clerks. the Council of Nantes, which ordained, that “every parish-priest should have a clerk to chaunt with him, and read the lessons; who could also keep school, and admonish the parishioners to send their children to learn the Faith.” Hence came the customary participation of the clerk in the offerings. Such a position is more suitable to a deacon than to a low functionary. Van Espen complains, how foreign to the Church’s intention it is, that in the highest function of all (the Mass) some mean unmannerly boy should assist, and answer as a Minister in the name of the whole Church.<sup>1</sup> Our experience of parish-clerks in England has not been much more felicitous than his of ‘servers’ in Belgium.

A Priest cannot celebrate Divine Offices without the suffrage of a minister.<sup>2</sup>

## CHAPTER XLIV.

### OF BENEFICES.

§ 1. In the language of canonists, Church property is said to be the Patrimony of Jesus Christ, acquired by His Church Property, the Patri-mony of Jesus Christ. Let an Incumbent therefore take heed that with it he deal not wantonly nor dilapidate; but live honestly, regarding himself as a steward, not the master.<sup>3</sup> The goods of the Church are a property entrusted to the clergy for the aid of the poor.<sup>4</sup> Before tithes became a settled institution, ‘the ancient Rule,’ says Pope Gelasius, divided the oblations of the faithful into four parts; whereof the first was assigned to

<sup>1</sup> I. p. 30.

<sup>2</sup> Decr. Greg. I. Tit. XVII. c. 6.

<sup>3</sup> Petr. De Ancharano, *sup. Decr. Greg.* III. Tit. V. f. 19.

<sup>4</sup> Council of Châlons, can. 6. A.D. 813.

the bishop, (who was charged with the extraordinary expenses of the Church in aid of orphans, widows, and strangers;) the second to the clergy; the third to the poor; the fourth to keep up the church fabrics.<sup>1</sup>

Principle regulating prefer-  
ment.

§ 2. By the canons, all clerks who faithfully serve the Church should obtain from the bishop stipends according to their deserts.<sup>2</sup>

Special honour paid to rank and learning in confer-  
ring of benefits.

§ 3. Learned persons are put on a level with men of birth; and so the Church ought to honour them in word and in deed, as by supplying them more liberally from the revenues of the Church beyond others less learned. And this proceeds from no other reason but because knowledge profits, not only its possessor, but also the Church in general.<sup>3</sup>

Of vacant Benefices.

§ 4. Benefices should not be promised any one before a vacancy; lest a man seem to desire the death of his neighbour, into whose place he believes he may succeed.<sup>4</sup> Vacant benefices should be conferred within six months. Otherwise, the Chapter shall supply the negligence of the Bishop, he that of the Chapter, and the Metropolitan that of either party.<sup>5</sup> He who has the right of instituting to or of conferring has the custody of a vacant church. The prescription of institution extends to the custody, as an accessory to the principal.<sup>6</sup>

§ 5. Hereditary succession in ecclesiastical benefices

<sup>1</sup> II. Decr. xii. qu. ii. c. 30.

<sup>2</sup> Council of Agde, can. 36. II. Decr. Caus. I. qu. 2. c. 10.

<sup>3</sup> Panorm. VI. f. 36. Founded on Canon 29 of the Council of Lateran under Innocent III. [If high preferment be a snare, some of the most highly gifted ecclesiastics are preserved from it. Hooker was but a country parson. Stapleton, the most learned R. Catholic in a learned age, was but Dean of Hilverbeck, in Brabant; “little enough, God wot, for such a rare and most learned Clerk as he was.” (Anth. à Wood, Athenae Oxonienses, I. f. 254.) Keble shared the lot of him whose Works he so well edited. The greatest of all, John Henry Newman, was long left in the shade; till it pleased Leo XIII. to grace with the purple, one, the neglect of whom was a standing reproach to the Churches he had enriched.]

<sup>4</sup> Third Council of Lateran, can. 8. A.D. 1179.

<sup>5</sup> Ibid.

<sup>6</sup> Panorm. VI. f. 54.

is reprobated ; and it was a reason for prohibiting the son of a priest ministering in the church, where his father had been parson or vicar, lest such succession be remarked in the Church of God.<sup>1</sup>  
 Inherit-  
ance of  
Benefices  
dreaded.

For ecclesiastical honours belong not to blood or to hereditary right, but to merit.<sup>2</sup>

§ 6. An incumbent is bound to pay debts contracted by his predecessor for the needs of the church.<sup>3</sup> If a clerk hath contracted debts towards his maintenance, then not only in his lifetime, but even after his death, ought his creditors to be satisfied out of the fruits of his benefice : not so, if the debts be for repairs of houses or the like.<sup>4</sup> By custom the fruits of a benefice might go to pay a deceased clerk's legacies or debts, if he died after Lady-day ; but in common law the fruits not yet received by the deceased belong to his successor.<sup>5</sup>

§ 7. The wants of the Church or even the advantage of the persons beneficed suffice to effect an exchange of benefices. For example, the air of a place doth not agree with the incumbent ; he lawfully exchanges with one who may usefully reside there.<sup>6</sup>

§ 8. To hold Church-preferment in more than one diocese is against an express canon of the whole Church, (the tenth of Chalcedon.)<sup>7</sup> Benefices require residence ; and on that account doubtless only one is, strictly speaking, to be retained, for every benefice was created for the sake of the duty. But suppose the custom otherwise, then either one suffices for the suitable maintenance of a clerk, and it is not lawful for him to hold a second for his own profit ; yea, it is a mortal sin, even that of avarice, and he

<sup>1</sup> I. Decret. Greg. Tit. xvii. c. 11.

<sup>2</sup> Second Council of Lateran, can. 16. A.D. 1139.

<sup>3</sup> III. Decret. Greg. Tit. xxiii. c. 1.

<sup>4</sup> Panorm. VI. f. 119.  
<sup>5</sup> Lyndwood, Provinciale, p. 25.

<sup>6</sup> Panorm. VI. f. 90.  
<sup>7</sup> Thorndike, Just Weights &c. ch. xxiv. § 1.

occupies the stipends of poor men. Or one benefice alone suffices not; and it is then lawful to hold another, to the extent of a suitable maintenance.<sup>1</sup> A reasonable exception to the rule laid down against plurality is, when the beneficiary's church hath of old a chapel adjacent to it, which it is not expedient to separate.<sup>2</sup> Another exception, allowing plurality, when the beneficiary hath priests under him in each additional church to solemnly perform "the daily office and Mass,"<sup>3</sup> opens the door to evasions destructive of the rule. Where the plea of insufficient maintenance cannot be urged, would a pluralist be excused, if dispensed with? Panormitan answers, "I believe not as regards God, unless he converts the fruits of the benefice to a pious purpose."<sup>4</sup> Here again (I think) the proviso serves to destroy the law. If "every benefice was created for the sake of the duty" attaching to it, no pretence of pious purpose to be *elsewhere* carried out justifies the abstraction of local revenue. Are we to excuse Wolsey's holding the bishopric of Tournay along with that of Lincoln on the ground of his munificence, or Beaton being Archbishop of S. Andrew's and Bishop of Mirepoix to support the state of a Cardinal?

§ 9. The admission of a clerk to more benefices than one is branded as a custom of the Gallican Church and contrary to Canon Law.<sup>5</sup>

§ 10. An incumbent (*praelatus*), who doth not the spiritual things, cannot exact the temporalities. It may be objected against such an one, that, when he fulfils not the purpose of the endowment, its benefits are no longer due to him.<sup>6</sup> At the Council of Lyons, A.D. 1245, the English complained that the Italians provided with benefices in England by the Pope drew yearly a larger sum than the

<sup>1</sup> Panorm. VI. f. 29.

<sup>2</sup> Council of Metz, can. 3. A.D. 888.

<sup>3</sup> Council of Nantes, can. 8.

<sup>4</sup> VI. f. 19.

<sup>5</sup> III. Decr. Greg. Tit. V. c. 15.

<sup>6</sup> Panorm. VI. f. 142. III. Decr. Greg. Tit. xxix. c. 5.

King's revenue; that they neither cared for the guidance of souls, nor discharged the duty of hospitality and alms; in fine, they (the English) could not suffer it much longer. The Pope Innocent IV. would apply no remedy.<sup>1</sup>

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## CHAPTER XLV.

### OF COLLATION AND INSTITUTION.

§ 1. Collation is, properly, a free transference of right; for he that hath the collation of a benefice may freely confer it on whom he pleases. *Institution* is taken in law for a transference of right, not free, made by a superior; when, for example, the person presented is instituted through a patron. But that transference is not free; for the superior, will he nill he, is bound to institute the person presented on the ground of his idoneity.<sup>2</sup>

§ 2. The Collation of benefices is not altogether in the mere power of a superior; for he ought to distribute them without acceptance of persons. Although Collation otherwise effected is valid, the superior sins who hath not reason on his side.<sup>3</sup>

§ 3. Where a person is instituted to a church with cure of souls, who cannot speak or understand the idiom of the place, he should be deprived of the benefice, and the institutors forfeit their right for that turn.

<sup>1</sup> Fleury, Hist. Ecclés. L. lxxxii. c. 28.

<sup>2</sup> Panorm. vi. f. 53.

<sup>3</sup> Ibid.

An important condition. <sup>4</sup> Council of Château-Gonthier, can. 16. A.D. 1231. See above, Ch. XXX. § 2.

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## CHAPTER XLVI.

## OF THE RESIGNATION OF BENEFICES.

§ 1. HE who perceives himself to be *insufficient* ought

Causes of  
Resigna-  
tion :

1. Insuf-  
ficiency.
2. Simony.
3. Avoid-  
ance of  
scandal.
4. Incor-  
rect mo-  
tives.

to resign his dignity.<sup>1</sup> He who has obtained a benefice unwittingly through another's *simony* cannot with a safe conscience retain, but should resign, it.<sup>2</sup> He who cannot retain the right of *prelacy*, (i.e. that of an Incumbent) without *scandal* to the people, when for instance he is hated by them owing to a fault perhaps wrongly imputed to him, should resign it: but his superior should provide him with a good exchange.<sup>3</sup> He who accepts a benefice with the intention of holding it until he gets a richer one, or has no mind to reside on it, such an one is wrongly preferred in that place. For in accepting the church he thereby contracted the obligation of perpetual residence. Mark this in the case of young men mostly, who take benefices for a livelihood, without a mind to live up to their calling. If they repent and truly apply to their duty, they are not bound to resign their benefices; but it is enough that they satisfy God by penitence.<sup>4</sup>

§ 2. The resignation of a benefice ought to be made to some one personally. It seems then that the mere renunciation, without an external act, holds not; yet it prejudices the resigning parson, when made? the bishop esteems it ratified.<sup>5</sup> The vacancy of a benefice is effected, when a man has had peaceful possession of a second.<sup>6</sup>

<sup>1</sup> Sext. Decret. I. Tit. VII. c. 1.

<sup>2</sup> V. Deer. Tit. III. c. 26.

<sup>3</sup> Panorm. VI. f. 51.

<sup>4</sup> Ibid. VI. f. 18.

<sup>5</sup> Petr. De Ancharano, *sup. Sext. Deer.* I. Tit. III. c. 6.

<sup>6</sup> Ibid. L. III. Tit. iv. c. 28.

## CHAPTER XLVII.

## OF PARISH-CHURCHES, AND THEIR RIGHTS.

§ 1. THE term ‘ Parish,’ (in Greek, *Paroikia,*) as used in the primitive Church, designated a district of moderate extent, whose principal church was the residence Of the Formation or *See* of a *Bishop* or Apostolic overseer, supported by associate ministers or Clergy. As new Parishes. their work prospered, the mother-church or Parish put forth off-shoots, which reproduced in a measure the features of their parent. Episcopacy was not a culminating effort of priestly organization. The Parish (in its later restricted sense) grew out of the primitive See; and the term ‘ Pagans’ (or *country-folk,*) still applied to the heathen in the sixth century, marks the slow progress of evangelization. These remarks may help to explain the principle, which governs the canonical dispositions with regard to the growth of Parishes. As a rule, says Panormitan, a parish ought not to be divided without a cause; for that were an alienation of the rights of the church. A just reason for dividing a parish and building a new church is, when, for example, the parish is so extensive, that in rough weather the people cannot be present at Divine Service at the proper hours. As a layman acquires the right of patronage by building or endowing a church; so doth a church also in regard to another built at its expense. By reserving the right of patronage to the old church, the law seems to set the chapelry free from it in other respects. No church, save the cathedral, grounds its claim, in common law, on the subjection of another, even though it be founded within its parish. But if the original church has made no grant, there is nothing to prove it the patron of the new. For by merely building within the limits of the parish, the old church neither founds, nor yet acquires the patronage.<sup>1</sup>

<sup>1</sup> VI. f. 220.

A church may be built without an endowment, when there are no means of endowing it. For a bishop ought not, for want of endowment, to suffer souls to be imperilled ; as when, owing to distance, men often die without the sacraments.<sup>1</sup> Thus, Alexander III. orders the Archbishop of York, in a case where people could not in winter by reason of floods reach their parish church without great difficulty, to erect a country church out of the funds of the parish where it was possible ; and that, in spite of the opposition of the parson of the mother church ; who, however, was to have the right of presenting a priest to the new church.

Ordinarily, a church ought not to be consecrated, unless an endowment be assigned. So stringent were the provisions of the Canon Law in its palmy days, that the person demanding its consecration might be compelled to endow it, as by a *quasi-contract*. Or in default of such, action might be taken against the consecrating bishop to compel him to do so out of the property of his church ; or, if that might not be done without enormous injury, out of his own.<sup>2</sup>

§ 2. The ordinance of Alexander III. is enforced by two eminent canonists ; one of whom guards against impairing the ‘sufficient maintenance’ of the original Even against the will of the parson of the mother-church. Incumbent.<sup>3</sup> The other reasons, saying, “ Because the clergy are not masters of their benefices, which have been constituted for the public good ; therefore the bishop, as the lawful administrator, may divide them.”<sup>4</sup> He further opines, that, if a difficulty were raised, the bishop might appoint a perpetual curate against the will of the Rector and Patron, whose unreasonable contradiction should not be allowed.<sup>5</sup>

§ 3. The lesser churches are called *chapels*. (‘capellae,’)

<sup>1</sup> Panorm. VI. f. 220.

<sup>2</sup> III. Decr. Greg. Tit. xlviij. c. 3. Panorm. VI. f. 208.

<sup>3</sup> Archidiac. sup. Decr. f. 238.

<sup>4</sup> Zabarella, sup. III. Decr. f. 25.

<sup>5</sup> Idem. sup. Clementin. f. 36.

from the goat-skin tents employed of old for sacred purposes by noblemen on their journeys, as some  
Of Parish Chapel-ries. say. Their ministers are termed *chaplains*.<sup>1</sup> If

there be any chapel, which cannot support a clergyman, let the charge of it rest with the Parson of the church, to which it is subject; and let him provide for the duties thereof.<sup>2</sup> In a chapel built within a parish, the Rector ought to present a priest, with consent of the Founder of the chapel.<sup>3</sup> When such chapel has no font, its attendants are bound to go to the parish priest for catechizing and baptism; but nothing is thence inferred in law as to the subjection of the priest that serves it.<sup>4</sup>

§ 4. Persons were soon found to build a church, not out of devotion, but in order to divide profits with the clergy serving it. Bishops are forbidden to consent to this ‘so abominable a desire,’ or to consecrate a church ‘under a tributary condition.’<sup>5</sup> Later on, priests are forbidden to prevail on others’ parishioners to come to their churches, or to receive dues owing to another, or to *desire indirectly to obtain another’s church*, under pain of forfeiture of Orders.<sup>6</sup>

§ 5. Priests ought not to receive others’ parishioners to Communion on Sundays and holydays, if they resort to them out of contempt for their own priest. If In what cases may persons leave their parish church? however they have a legitimate cause, suppose he is a notorious sinner, they would not sin; because in that case the contempt would be grounded on law. Parish churches should not be forsaken for a light reason. It is proper to hear divine service in one’s own parish on Easter-day, Christmas, and the like. But people may always lawfully resort to the cathedral, because the bishop has the spiritual charge of all throughout his diocese.<sup>7</sup> Panormitan allows that

<sup>1</sup> Archidiac. sup. *Decreto*, f. 238.

<sup>2</sup> Council of Piacenza, under Urban II. I. Decret. dist. 70.

<sup>3</sup> Petr. De Ancharano, sup. III. Decr. Greg. Tit. xlvi. f. 191.

<sup>4</sup> Panorm. VI. f. 188.      <sup>5</sup> Third Council of Braga, can 6. A.D. 578.

<sup>6</sup> Theodulf, capitula 15, 16. A.D. 994.

<sup>7</sup> Panorm. VI. f. 141.

the more devout and frequent celebrations, in his day, in the churches of the Mendicant Freres, and their preaching before or after Mass, were reasons to excuse those who forsook their own priest to attend them; but "Sacraments" he holds "cannot be received from an extern, without special leave of one's own priest."<sup>1</sup>

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## CHAPTER XLVIII.

### OF THE RIGHT OF PATRONAGE.

§ 1. THE right of Patronage was first sanctioned by the Ninth Council of Toledo, A.D. 655, in order to encourage Its origin and purpose. those who built or endowed churches. The Founder (and after him his kin) was not only to see that the clergy did not waste or embezzle the property, and denounce any wrong to the Bishop, Metropolitan, or Sovereign, but also to find a Rector to serve the church; in default of his doing so, the Bishop was to appoint.<sup>2</sup> The said right is sometimes called *Advowson*; whence a Patron may be styled the *Advocate* of the church, (the old French *Avoyer*,) because of the right whereby he is bound to defend it.<sup>3</sup>

§ 2. The possession of it is proved by Presentation, followed by Institution.<sup>4</sup> In case the Patrons be not known, whereas it is certain that churches must have had founders, it is presumed, by a rule of probability, that they were founded by the people; hence Bohic concludes, that the exercise of a single act competent to a patron will prove the possession of patronage.<sup>5</sup>

§ 3. It is acquired by one of three modes: either by building a church, or by endowment, or by foundation, that

<sup>1</sup> Panorm. VI. f. 141.

<sup>2</sup> II. Decr. Causa xvi. qu. 7. capp. 31, 32.

<sup>3</sup> Ibid. VI. f. 191.

<sup>4</sup> Consilia Panormitani, fol. 24. Lugduni, 1586.

<sup>5</sup> Henr. De Bohic, *sup. Decret.* I. f. 27.

is, when a man gives the ground whereon to build the church. If several persons conjointly give the endowment, they all are patrons, even if one of them gave less than another.<sup>1</sup> To acquire the right of patronage, something must be given for the endowment: otherwise the donor is indeed a benefactor, but acquires not the said right. For the law grants it only to him that endows; and therefore let him that will endow a church afresh be careful to state expressly that he grants such property *as endowment*.<sup>2</sup> It is contended, that the said right does not pass by marriage with the wife's property to her husband; because he derives from it no really estimable profit, but a kind of honour; therefore it should remain at the wife's disposal.<sup>3</sup>

<sup>Purchase  
forbidden.</sup> § 4. The purchase of Advowsons in order to present sons or nephews to the churches is strictly forbidden by the Canon Law.<sup>4</sup>

§ 5. A Patron may not present himself, is an axiom in Canon Law.<sup>5</sup> May he then present his son? Father and son seem to be one person by a legal fiction; but in spiritual things truth is to be regarded rather than fiction. Therefore, as in spirituals the son is independent of his father, he may be presented by him, provided he be a proper person.<sup>6</sup>

<sup>Patron  
may not  
present  
himself.</sup> <sup>Rules re-  
pecting  
Joint-  
Patrons.</sup> § 6. A Patron may present another, who is co-patron: but one of two that ought to elect as a college cannot elect the other.<sup>7</sup> Where joint-patrons are not agreed, the majority shall determine the appointment. The Bishop shall appoint, where the right of patronage is disputed over three months.<sup>8</sup>

<sup>1</sup> Panorm. VI. f. 189.

<sup>2</sup> Ibid. f. 190.

<sup>3</sup> Ibid. f. 64. He infers, that a ward over seven years old is more entitled to present than his guardian.

<sup>4</sup> III. Decr. Greg. Tit. xxxviii. c. 6.

<sup>5</sup> III. Decret. Greg. Tit. xxxviii. c. 26.

<sup>6</sup> Panorm. VI. ff. 55, 194.

<sup>7</sup> Petr. De Ancharano, *sup.* Decr. Greg. III. Tit. xxxviii. f. 164.

<sup>8</sup> Third Council of Lateran, can. 14.

§ 7. Honorary precedence, and the right of moderate Rights of help out of the church-funds, (in case of his Founders. verging to destitution,) were reserved for the founder of a church.<sup>1</sup>

§ 8. On most points the ecclesiastical patron had an advantage over the lay. The former had six months, within which he might present; he might exact an account of the temporalities, and had the custody of the vacant benefice. On the other hand, severe penalties awaited him in case of an unworthy presentation; he might not, like the lay patron, change his mind as to his presentee; and, lastly, his right was liable to be anticipated by the Papal Legate.<sup>2</sup> By statute law in England lay patrons had six months to present, as well as the ecclesiastical.<sup>3</sup>

§ 9. The King of England is patron and lord of all the cathedral and of certain collegiate churches of England. Rights of Royal Patrons in England. land [and Normandy,] for they held great fiefs of him. And therefore, either by reason of the right of patronage or of the said fiefs, he conferred prebends during the vacancy of certain sees. My authority adds, "Such collation was null, but the Pope put up with it to avoid offending the King."<sup>4</sup> Lyndwood quotes the above statement from Tancredus. He is troubled by the fact, and forced to suppose that the King did so by authority of the Pope. But he brings no proof of any Papal grant.<sup>5</sup> Hence I infer, that at least the old historical Sees of England, being originally in the patronage of the Sovereign, the absolute freedom of their Chapters in the matter of Election of Bishops cannot be sustained; seeing they hold endowments originally derived from the Crown.

<sup>1</sup> III. Decret. Greg. Tit. xxxviii. 5. 25.

<sup>2</sup> Panorm. VI. f. 197.

<sup>4</sup> Archidiac. sup. Decr. f. 11.

<sup>3</sup> Council of Oxford, *ap.* Lyndwood.

<sup>5</sup> De Cohab. Cler. 126.

## CHAPTER XLIX.

## OF THE SPIRITUAL CAPACITIES OF LAY-PEOPLE.

§ 1. "LAYMEN should not assume the office of preaching," says Gratian, "without authority of the clergy,  
 As to unless perhaps they be inwardly moved by Divine  
 preaching grace."<sup>1</sup> He alludes to the case of Equitius  
 an abbat of Valeria, who was asked, "How do  
 you presume to preach, who are not in holy orders, nor  
 have received licence from the Roman Pontiff, under  
 whom you live?" He admitted that he asked himself the  
 same question; but referred to a vision he had had,  
 saying, "And from that day, even when I would, I cannot  
 hold my peace concerning God."<sup>2</sup> A curious case occurs  
 of a little Frere of 13 or 14 years' age, who preached at  
 Rome to every one's astonishment, on May 1. 1485.<sup>3</sup> A  
 layman may preach by appointment of the bishop, but  
 not of his own authority. An old gloss extended this to  
 women, but wrongly, as Panormitan thinks; "for preaching  
 is a man's office, and it would detract from the honour  
 of Christendom, and is dangerous owing to the weakness  
 of the sex."<sup>4</sup> The Fourth Council of Carthage expressly  
 orders; "Let not a woman, however informed and holy,  
 presume to teach men in a meeting; nor a layman ven-  
 ture to teach in the presence of clerks, except at their  
 request."<sup>5</sup> The Council in *Trullo*, accepted by the Eastern  
 Church, legislates in like manner.<sup>6</sup> We have an instance  
 of a lay-preacher before the University of Oxford in A.D.  
 1569, when Richard Taverner of Wood-eaton, High  
 Sheriff of the county, preached at S. Mary's; but it was  
 when divines were scarce, and the 'fine biscuits,' which  
 he produced for 'the chickens of the church,' served to  
 provoke merriment rather than edification.<sup>7</sup> The pro-

<sup>1</sup> II. Decr. Caus. xvi. qu. 1. c. 40.    <sup>2</sup> S. Greg. Magni Dialogg. I. c. 4.

<sup>3</sup> Diario di Roma, ap. Muratori III. 2.

<sup>4</sup> Panorm. III. f. 9.

<sup>5</sup> I. Decret. dist. 23. c. 29.

<sup>6</sup> Canon 70.

<sup>7</sup> Anth. à Wood's Athenae Oxonienses, Vol. I. f. 144.

hibition of women-preachers was not held to extend to the cloister. We are told, that M<sup>me</sup> De Mesgrigny, Abbess of Charenton, used to discourse to her nuns on the chief festivals with such unction that they were deeply touched thereby.<sup>1</sup> But women are forbidden to *serve* at the altar.<sup>2</sup> And Innocent III. reminds us, "Though the blessed Virgin Mary was worthier than all the Apostles, yet to them did the Lord commit the keys of the kingdom of Heaven."<sup>3</sup> But while women may not publicly minister in the congregation, to consult the more intelligent women in private on spiritual concerns "is nothing unusual," says Balsamon.<sup>4</sup> Remembering how much some of the greatest Saints owed to certain holy women; the Scriptural association of Miriam with Moses and Aaron, of Deborah with Barak, of Huldah with Jeremiah and Zephaniah; S. Paul's eulogies of 'the beloved Persis,' of the deaconess Phoebe, of Euodias and Syntyche his 'fellow-labourers'; not to mention the numerous female glories of Church history, it seems a duty to point out how the sexes meet together as equals in Christ, and build up His spiritual temple.

As to § 2. Furthermore, a layman may, in case of baptizing. necessity, baptize and hear confession.

§ 3. He may be the assessor of an ecclesiastical judge in a cause spiritual; for jurisdiction is nowise grounded

As to jurisdiction. on the person of the assessor, but assessors were invented to supply the inability of judges.

The faculty of dictating a sentence in spiritual causes cannot be granted to a lay assessor. When clerks are guilty of schism and subvert the faith, or are incorrigible, a layman may exercise jurisdiction over them: but such cases are exceptional.<sup>5</sup> That church business should be disposed of by lay judges, shocks Panormitan,

<sup>1</sup> Martenne et Durand, Voyage Littéraire, I. 43, 44.

<sup>2</sup> Decretal. P.P. Gelasii, c. 24.

<sup>3</sup> Decr. Greg. V. Tit. xxxviii. c. 10.

<sup>4</sup> Beveregii Synodic. I. 240.

<sup>5</sup> Panorm. III. f. 9.

who was the luminary of canonists. The English Church is now entirely under lay control.

§ 4. The canonists hold that even Kings cannot possess spiritual right. Whence it is inferred that *they are pure laymen*, receiving no ecclesiastical order from their coronation and unction.<sup>1</sup> The English mind appears to have been working towards the theory accepted at the Reformation, as is seen by what Lyndwood says; “An anointed King is *not a mere lay-person*, but *a mixed*, (‘*persona mixta*,’) according to some.” This theory is idle, now that since the Revolution of 1688 the Sovereign acts through a responsible adviser, who depends on a majority of the House of Commons; which also in turn obeys the fluctuations of public opinion, and is by no means limited to the laity of the State Church.<sup>2</sup>

## CHAPTER L.

### OF THE AUTHORITY OF PRINCES OVER THE CHURCH.

§ 1. It is a standing reproach against the Anglican Church that since the time of Henry the Eighth she has become “the slave of the Civil Power.” The same charge was brought against the Greek Church by Pope Gregory IX., that, since she broke with the Roman, she had lost her freedom, and then gradually gone astray from purity of faith and discipline. The ground of the charge, according to the Gallican Fleury, was, that the Greek clergy kept better within the ancient limits of ecclesiastical immunity;<sup>3</sup> and that the frugality and poverty of the Greek bishops contrasted strongly with the pomp and temporal grandeur of the Latins.<sup>4</sup> Insomuch that the *condemned Book* of the

<sup>1</sup> Panorm. VI. f. 153

<sup>3</sup> Hist. Eccl. I. lxxx. c. 20.

<sup>2</sup> De Cohab. Clericor. 126.

<sup>4</sup> Ibid. c. 36.

Eternal Gospel said the Greeks did well to separate from the Latins and walked more according to the Spirit. But I find the servile spirit of Orientals rife among the Byzantines; as, indeed, is confessed by Zonaras, when, defending the rights enjoyed by the Emperor, such as promoting Patriarchs with invocation of the Holy Trinity, and of censing and blessing the altar, as bishops do, he saith; “Not so far as he is a layman, but *because of his power and autocracy* was this granted him by the old Fathers.”<sup>1</sup> Be that as it may, the Reformation of the English Church proceeded on the principle, that “all Christian sovereigns are born advocates and patrons of the faith and rights of the Church; and if by lapse of time they be gone to decay, it lies in the sovereigns to restore their subjects to those rights,” by the instrumentality of those that have authority to deal with the matter by the constitution of the Church.<sup>2</sup> They may not judge touching Doctrine, nor decide questions of Discipline, nor deal with the ministering of the Sacraments. Their prerogative is distinctly limited by the Church to a general oversight and rule over ecclesiastical as well as temporal states and degrees; in a word, as the Declaration prefixed to the Articles expresses it, “Princely care that the Churchmen may do the work that is proper unto them”; and besides, they have coercive jurisdiction, “to restrain with the civil sword the stubborn and evildoers.”<sup>3</sup> This prerogative, it is stated, “we see to have been given always to all *godly* Princes,” (that is, *not heathen*,) “in holy Scriptures by God Himself.” This at first sight is not so evident. Some Princes, (as David and Solomon,) acted under direct sanction of God. Others, (as Joash and Josiah,) were guided or influenced by priests and prophets. *Their* examples then are not to the point. But the true ground, whereupon Princes have claimed and exercised a supreme control over the Church, seems to be,

<sup>1</sup> Beveregii Synodic. I. 239.

<sup>2</sup> Thorndike, Just Weights &c. ch. xx. § 5.

<sup>3</sup> Article xxxvii.

that whereas God hath enjoined religious duties on His people beyond the performance of individuals, (such as extirpation of idolatry, witchcraft, heresy &c.) it appertains to the people to perform the same ; and that when their government becomes *monarchical*, (a case not commanded but tolerated by the Law of Moses,) their responsibility devolves on the august Person, who by the will of the nation becomes the lawful expression of its authority. Mark, however, this important difference, that, whereas Church and State were absolutely identical in the ancient people of God, and their very nationality depended on obedience to the Divine Revelation, the States and Nations that became Christian were in relations with other, and those hostile, Religions, before they came to deal with a new Society bound by engagements which held independently of the Civil Polity. Thus, though we find that “ ever since Princes became Christian, the business of the Church depended on them, and the greatest Synods took place by their will ”;<sup>1</sup> yet the Emperor Honorius says expressly, “ If aught touching *Religion* be mooted, the judgment should appertain to the Bishops. For theirs it is to interpret Divine things, ours to render religious obedience.”<sup>2</sup> The Prince might justly claim the right to restrain with his sword the evil-doers ; but the Church antecedently and by right Divine claimed the right and asserted the duty of drawing against them the spiritual sword of Excommunication. For that were no Society that could not determine the exclusion as well as the admission of its members.

§ 2. It is in relation to the complex cases, where the

Jurisdiction  
of  
Church  
and State  
inter-  
mingled.

respective jurisdictions of Church and State intermingle, that we are to understand Constantine’s language, when he styled himself Bishop external. And in such a sense did our King Henry VI. constitute Richard, Duke of York,

<sup>1</sup> Socrates, Hist. Eccles. L. V. p. 259.

<sup>2</sup> Labbei Concilia, Tom. II. col. 1312.

'Protector of the Realm and of the Church of England.'<sup>1</sup> It does not appear that the Church abdicated her right of internal cognizance and judgment, in consequence of the conversion of the temporal Powers; nor that the latter acquired by devolution the sole control of moral causes, mutually concerning both parties. The Canons of S. Basil attest the decision of Church officers even on cases of theft; and, however repugnant to modern notions may be some particulars in the contention of Thomas of Canterbury, he does not seem to have altogether outstepped the traditional claims of the Church. Thorndike holds, that for "the causes of the clergy to be heard and determined within the clergy themselves is very agreeable to reason of Christianity."<sup>2</sup> Ecbricht archbishop of York, four centuries earlier than S. Thomas, saith; "If any churchman commit murder, fornication, theft, it is fit he be seized by the laymen against whom he offends, unless the Church will make satisfaction for him."<sup>3</sup> But contrariwise King Cnute ordains; "If a churchman commit a capital crime, let men overpower him, and reserve him to *the bishop's doom.*"<sup>4</sup>

All claims of the Church covering matrimonial causes and the like are founded on the precedent set by S. Paul in his dealing with the incestuous person at Corinth, and the right of judgment he advanced for the Church in default of the secular powers, "the rulers of this world," then adverse to the Faith. That is to say, as it is expressed in the Apostolic Constitutions (chap. 45), "Suffer not the secular rulers to judge your people"; meaning, *Anticipate their action by a decision morally binding among yourselves.* A course which could succeed, only where the obedience of the litigants might be depended on. Let it not be forgotten, that on June 30. 1533, Henry VIII. solemnly appealed to the next General Council in a cause matrimonial.<sup>5</sup> A fact that proves that even he regarded such

<sup>1</sup> MS. Harleian, 6963.

<sup>2</sup> Right of the Church &c. ch. V. § 25.

<sup>3</sup> VIII<sup>th</sup>. Answer.

<sup>4</sup> Art. 4. A. D. 1018.

<sup>5</sup> Rymer, Foedera.

causes as belonging to the Church rather than the State, and presumably would not have set up a Lay Court of Divorce.

The outcome, Erastianism.      § 3. But what if the people, whose power and responsibility the Sovereign sums up in his own person, ceases to be "obedient to the faith";<sup>1</sup> what if even the Prince's powers be put in commission, and they that share it be themselves obnoxious to penalties,

which should ensue on the supposition of 'obedience to *one Faith*'? Such a state of things would naturally prove fatal to the supreme control *de jure*, which stands only on the presumed 'obedience.' And the persistent exercise of the supreme control *de facto* could only issue in confusion and the triumph of the theory called after Erasmus the German mediciner, "which dissolveth all ecclesiastical power into the secular in states that are Christian."<sup>2</sup>

A Church contentedly submitting to a supreme control thus iniquitously exercised might soon learn to be thankful for the retention of a single Creed at the good pleasure of her Supreme Governor. Her clergy might be learned and accomplished, her people for a season beguiled by a semblance of succession and cohesion; but they both would sooner or later have to suffer the penalties that await those who barter spiritual freedom for the things that perish.

## CHAPTER LI.

### OF THE INVASION OF ECCLESIASTICAL JURISDICTION BY THE CIVIL POWER.

§ 1. THE Court of Rome having under cover of forged Decretals swept away the ancient lines of ecclesiastical jurisdiction, the schisms produced by rival

<sup>1</sup> Acts VI. 7.

<sup>2</sup> Thorndike.

Civil  
Usurpa-  
tion bred  
by the  
Papal  
Schisms.

claimants to the Papacy in the fourteenth and fifteenth centuries furthermore rent the Latin Churches into two or more *Obediences* (as they were termed,) according as the various kingdoms of Europe *obeyed* this Pope or the other. Now, as the temporal Sovereign in any case determined the allegiance of his own subjects to the Papal Claimant, it was an easy step towards his dealing further with the whole matter of ecclesiastical right. And the extravagant claims set up on behalf of the Pope by interested canonists helped equally interested civil advocates to discredit the whole ecclesiastical jurisdiction, as resting on an unsound foundation.

§ 2. The circumstance of the Reformation being so largely the work of the Civil Power rendered plausible the

The Eras-  
tian prin-  
ciple  
avowed  
and acted  
on in  
England.

proposition, that in a Christian State Church and State were convertible terms, and consequently that the Head of the one was also Head of the other. That this doctrine was openly avowed and acted on at the Reformation cannot be denied, when the Act I Eliz. cap. 1, establishing the High Commission Court, having "annexed" the ecclesiastical authority "to the Imperial Crown of this realm," states that the Queen "shall authorize . . such person or persons" as she pleased, (with the simple limitation of being "natural born subjects,") not requiring that they be 'churchmen,' whether Bishops or clerks, or even communicants, (simply *not foreigners*, Italians &c.) "to visit, reform, redress, order, correct, and amend all such errors, *heresies*, *schisms*, abuses, offences, contempts, and enormities whatsoever, which *by any manner of spiritual or ecclesiastical power, authority, or jurisdiction, can or may lawfully be reformed etc.*" Here is no mere 'Appel comme d'abus,' as they will have it who care not to look facts in the face. No anticipation of Gallican 'liberties,' but a blow dealt to the liberties guaranteed the Church by Magna Charta. Here we find, not only the Pope, but also

the entire ground of the Canon Law clean gone; not a shred of an appeal to a National Synod allowed, nor of appeal to the next General Council, somewhat ostentatiously preferred by her Highness's learned father. The idea of the Church is merged in a secular Assembly of a few Peers and certain country magnates and a few burgesses, representing the English Nation, not forgetting a handful of Bishops created by the Crown; and this Assembly *by its own authority* annexes to the Crown what was not *within its right* to grant. According to its enactment, the Crown might by a *quorum* of *three* persons, two of whom might be *laymen* but one (to save appearances) a *Bishop*, under pretence of 'heresy' impose by interpretation a new religion on the country.

§ 3. I am aware that the Act V Eliz. c. 1, provides that the former Act, with the Oath of Supremacy, "shall be How taken and expounded . . . as is set forth in an qualified? Admonition annexed to the Queen's Injunctions"; which is also referred to in the xxxvii<sup>th</sup>. Article of Religion. But this notwithstanding, the large terms, whereby the Queen's Supremacy is expressed in the former Act and in the Oath, together with the high-handed action occasionally resorted to, clearly show that the extreme pretensions were held in reserve and might be enforced.

§ 4. This appears to me to be, in practice, the state of things in Russia, as well as in England; although M. Russian, Mouravieff denied the power of the Czar "to Byzantine, Gallican displace and to translate bishops."<sup>1</sup> The case of the Patriarch Nicon is a sufficient disproof.<sup>2</sup> analogies. What were the theory and practice of the Byzantine Church, whence Russia derives her Christianity, is clear from Balsamon. "He heard from the State-judges that the Imperial authority could do all things; it could assign a State-judge to adjudicate on a bishop or other in holy orders when impleaded, and conversely transfer the ecclesiastical into a State judicature." Again:

<sup>1</sup> Palmer's Notes of Visit to Russian Church, p. 161.

<sup>2</sup> Ibid. p. 103.

"The Emperor is subject neither to laws nor canons; wherefore he may freely erect an episcopal into a Metropolitical see, . . . and establish new bishops and Metropolitans."<sup>1</sup>

As for England, the words used by Fleury respecting the Gallican Church apply exactly to the Anglican. "If the lay judges *encroach on the Church*, there is no recourse save to the King's Council, composed again of lay judges brought up in the maxims of the Parliaments." "When it is a question of *censuring Popes*, we talk of the ancient canons; when of the King's rights, no usage is counted novel or an abuse."<sup>2</sup>

§ 5. Hooker draws dangerously near the Erastian principle, when he infers the authority of a *Lay Synod* for the Court of Parliament from a bare presumption of their Church-membership. Selden openly states, that 'the Church' our Saviour spoke of, when He said "Tell it unto the Church," was "the law courts which then sat in Jerusalem."<sup>3</sup> But Hobbes the Deist, affirming that "in Christian states the judgment of spirituials as well as of temporals belongeth to the civil authority," also holds, that "the Ruler of the State, in so far as he is a Christian, is bound, where there is a question touching the mysteries of the Faith, to interpret the Sacred Scriptures *by means of Churchmen rightly ordained.*"<sup>4</sup> This exactly accords with the Royal Engagement prefixed to 'the Articles of Religion.' Hobbes dealt civilly by the Church.

§ 6. But Hooker's notion of a *Lay Synod* was adopted by the Party whom he had in life opposed.

Operation of Hooker's 'Lay Synod.' The Long Parliament 'annexed' the church jurisdiction to themselves, even in such a matter as the "final determination," whether a man might or might not be admitted to Communion.<sup>5</sup>

<sup>1</sup> *Apud Beveregii Synodicon*, T. I. pp. 531, 538.

<sup>3</sup> Rushworth I. p. 203.

<sup>5</sup> Ordinance, March 14. 1645. Rushworth, Part IV. vol. i. p. 226.

<sup>2</sup> Discours x<sup>me</sup>.

<sup>4</sup> De Cive, c. xvii. § 28.

So that if the Anglican Church is damaged by its acquiescence in the usurpation of 1558-9, so are the Puritans by their very action in 1645. For at that period, *as in our own day*, we find “a secular power, interested only in point of fact in Church matters, investing a civil court with the power of the keys, *without any ground of right to do it*”; and erecting “an ecclesiastical power, contrary to the laws given the Church by our Lord and His Apostles.”<sup>1</sup>

§ 7. The natural result of the foregoing has been, that learned civilians in our day have undertaken to rule on behalf of the Anglican Church, that a man denying the existence of evil spirits, and therefore a quasi-Sadducee, and moreover by the latest fruit off a wild olive-tree. fact of his impugning our Lord’s express statements guilty of ‘blaspheming and hindering God’s Word,’ is yet entitled to communicate *in holy mysteries*.

It follows from the premisses that the persons invested with the supreme Jurisdiction, that is, ‘declaring of the Law’ in the Church of England assign less weight to the Church than doth the Author of ‘Leviathan,’ who plainly grants that in questions of the Faith the State is bound to be guided by Holy Scripture, and to receive its interpretation from duly ordained ecclesiastics.

## CHAPTER LII.

### OF THE ALLIANCE OF CHURCH AND STATE.

§ 1. “There is a saying of St. Jerome’s, which may justly move a tender spirit to doubt, whether the interest of secular powers in Church matters be from God.” For seeing that since the Church began to have Christian magistrates, the greater its wealth, the fewer its virtues, a *primâ facie* The Alliance not itself the cause of corruption.

<sup>1</sup> Thorndike, Right of the Church, ch. V. § 85.

presumption there is, that the decay of Christianity hath proceeded from the favour, protection, and immunities accorded by the State. This view was coming to the surface at the troubled period of the Papal Schism; and Dante the (eminently) Catholic poet as well as the Reformer Wicliffe levelled sarcasms at ‘the first *rich Pope*,’ and bewailed the Church envenomed by the endowments of Constantine.

A truer intuition would trace its decay to the influx of interested, time-serving *converts* into the Church in consequence of the Roman Emperor’s embracing Christianity.<sup>1</sup> But if they did become Christians in profession “for fashion’s sake or for hope of advantage”;—and the celebrated saying of a heathen, preserved by S. Jerome, ‘Make me Bishop of Rome and I will presently be a Christian,’ clearly shows us the sort of ‘advantage’ aimed at—this fact itself, so far, tells against the alliance of Church and State. “The splendour of Prelacy” is a plea passionately urged in modern as well as in mediaeval times.<sup>2</sup>

And when “the coming of the world into the Church” is described as “the decay of Christianity,” but “the power of the State in the Church” as “a prop to sustain it from utter ruin,”<sup>3</sup> I confess I cannot recognize the ring of true Christian faith in the perilous voice, which pronounces the Church a hopeless ruin barely held together by the specious ivy that originally promoted its decay. Not so writes Fleury of the primitive bishops! “They believed not that Religion needed the support of the temporal power.”<sup>4</sup> Over two centuries have elapsed since that voice (in 1669) demanded, not only Freedom of Election and Freedom of Synods, but also that the State should brand with infamy the sins of apostasy, duelling, adultery, if it was to retain the character of Christianity. In not a single

<sup>1</sup> Thorndike, Review of Right of the Church, § 13. 18.

<sup>2</sup> Fleury, Discours 7<sup>me</sup>.

<sup>3</sup> Thorndike, *ubi supra*, § 17.

<sup>4</sup> Discours 2<sup>me</sup>.

instance has the State relaxed its jealous hold on the action of the Church; so far from granting that which would justify the Reformation as a partial return to primitive discipline, the changes which Time has wrought in the constitution of the State make it the wildest dream to entertain the hope that it will grant fresh powers to ensure the Church's welfare in this behalf. To advocate the dissolution of the Alliance of Church and State, or, in other words, Disestablishment, in order to lighten the strain which now attends it, would be, to invite the Nation to a fatal act of Spoliation. To dissemble the perils that Alliance now breeds to the Church, or to seek pitiful expedients to staunch an inveterate wound, is as dishonest as it is impolitic.

§ 2. In England the said Alliance has advantages, balanced by formidable perils. Some congratulate themselves on the facilities it affords to secure access to the Church's teaching, where (they take it) without that countenance the English people would be indifferent. They justly feel that the secure provision made (in general) for the support of the clergy relieves them from many carking cares and meaner anxieties; and that the laity are left free to contribute (as some do munificently) to fresh ventures of faith in the service of God. They cling to the last remnants of *National* profession of Christianity, and tremble lest the dissolution of a time-honoured partnership may bring forth evils surpassing those it already entails. A state of things, allowed of God now over a thousand years, may not be lightly set aside.\*

Men should duly ponder, concerning this question, how that the establishment and endowment of the Catholic Church under the Roman Empire and its successors came, not without the intention of the Most High, in direct fulfilment of Prophecy; and that no fractional portion of Christendom, no *sect*, no Independent body, can or doth answer its conditions. The Prophet Isaiah contemplates one *Catholic Church*, not *congregational churches*; and, in

particular, that *one* Church connected with ‘the isles,’ (which even in his time, and long before that, supplied the Orientals with ‘*tin*,’ Numbers xxxi. 22. Ezek. xxvii. 12. Isaiah i. 25.) as also with ‘the ships of Tarshish.’ “Surely the isles shall wait for Me, and the ships of Tarshish first, to bring thy sons from far, their silver and their gold with them, unto the name of the Lord thy God, and to the Holy One of Israel, because He hath glorified thee. And the sons of strangers shall build up thy walls, and their kings shall *minister* unto thee.”<sup>1</sup> They therefore, who help to terminate the Alliance will also bring to an end a state of things, which the Prophet contemplated with triumph. Like the Royal Estate set up in Israel *beside* the Will of God, (I Samuel, ch. 8,) or the Papacy built up on innumerable acts of voluntary homage, that Alliance cannot be dissolved without imperilling sacred interests.

§ 3. But in making these admissions in favour of the Alliance, I may not forbear to note, that they apply also to the Papacy in its vigorous days. For I hold that a strong government, accepted for centuries as of Divine appointment, must have been at least allowed of God, even though it were a usurpation ; for the Holy Spirit abides in “the Ark of Christ’s Church” *all the days*, and the Body of Christ is the Temple that enshrines Him. Not to repeat what has been already said by Dr. Arnold as well as by Cardinal Newman, I may ask, Where save in the See of Rome has the prophetic vision been fulfilled, of a Church to which kings should bow down and lick up the dust of her feet?<sup>2</sup> Neither the Byzantine nor the Anglican Communions have yet possessed the strength and cohesion that alone could ensure the fulfilment. And if in recent days we have seen the Papacy powerless to stay the madness of warring nations, and even robbed by its own children, we may therein note the decay, as of the Papacy, so also of Christianity.

The benefit of the argument shared by the Papacy.

<sup>1</sup> Is. ix. 9, 10.

<sup>2</sup> Isaiah xlix. 23.

§ 4. But there is another view of the Alliance, which occupies men's thoughts with increasing urgency. I mean the perils to Religion offered by the present *accidents* of the said Alliance. *First*, I will notice what I regard as (from a Catholic point of view) the most indefensible; namely, that it emphasizes an accidental passage of Church life, *Nationalism*; and at what cost? That, whereas union with the Bishop of Rome and the Eastern Patriarchs is necessary to the complete idea of a Catholic Church, for bishops must *in point of right* cohere with that source "whence hath sprung up sacerdotal unity," (as S. Cyprian saith,) the petrified condition of a Church bound by a State-Settlement renders all efforts in that direction hopeless. I do not mean that, were that bar removed, such union ought to be compassed on terms fatal to Christian Truth, as understood in the best ages of the Church, the ages of the Councils Oecumenical and of the Saints. Nor do I see the faintest indication of a mind on the part of the See of Rome to fairly re-handle the causes of our separation; specially the Bull of Pope Pius V., which even Roman Catholics are found to deplore.<sup>1</sup>

Yet S. Augustine thought it not beneath him to re-handle his former conclusions. And, surely, I may plead for the tempering (on our side) of rough phrases in Articles xix and xxii, levelled at venerable Apostolic churches, as well as at opinions and practices which all *scholars* must know obtained more or less in that Undivided Church, in whose faith Bishop Kenn professed to die. Some tokens possibly appear, in other quarters, of a disposition to draw towards union on the clear ground of "Stare super antiquas vias." Still, the vast preponderance and grand claims of the Roman Church make it impossible for me to think that we shall ever successfully vindicate the Gospel against Unbelief, until somehow by wise and salutary concessions on all sides the actual schism be terminated,

<sup>1</sup> Notes of Visit to Russian Church &c. by W. Palmer, p. 386.

and Anti-Christ be confronted by an united Christendom. *Secondly*, the Prophet saith that “Kings shall minister unto,” not rule over, the new Israel. A Settlement, which leaves the State master to the extent that the Church may not make further provision for needful discipline, nor affirm impugned doctrine with fresh sanctions, is not in harmony with any known theory of ministration. A Church without freedom of synodical action is, surely, not reformed after the rule and pattern of the primitive Church. It was Fleury’s judgment that the Church were better off with less temporal revenue, so it were free.<sup>1</sup> *Thirdly*, I might insist on the unreality of the *Congé d’Eslire*, and the un-Catholic character of episcopal appointments without the *bond-fide* election of the clergy and consent of the laity. But it may be urged with a show of reason, that the willing acceptance of this state of things by clergy and laity invalidates the objection; and that the advisers of the Crown do in general satisfy the Church by their choice. Still it is done in violation of the ancient *constitution* of the Church, and, so far, impairs her Catholicity. So clearly founded in Antiquity is the right of clergy and people in the making of those by whom they are governed, (a point on which the High-Churchman Thorndike and Baxter the Nonconformist are in strict accord,) that, till it be recovered, the authority of the Episcopal office must suffer, and a strong plea be reserved for Dissent. Nor may it be forgotten that the organs of the State not only express the lay mind exclusively, but also are liable to external influences hostile to the Anglican Church.

*Fourthly*, a more fatal miscarriage of the Reformation, tending to dissipate its pretensions to be a true renovation of decayed discipline on the old lines of the Church, must again be pointed out. That, whereas the Crown in resuming its admitted rights in the Act 37 Henry VIII. c. 17, also annexed the usurpations of the Pope’s Legates, no care hath ever been taken to challenge that right of the Church

<sup>1</sup> Discours x<sup>me</sup>.

to purely spiritual jurisdiction, which necessarily inheres in the very foundation thereof by Christ. The Church-courts and judges are the Sovereign's. The Bishops are vainly reproached with parting with a jurisdiction, which since the period of that Act has not been theirs to limit or to exercise. And the consequence is to reduce the Church to a mere shadow attendant on the State, and thereby to obscure, if not "void the profession of belief in One Catholic Church."<sup>1</sup>

<sup>1</sup> See Thorndike, Works, Vol. V. pp. 444, 5, 7.

*PART THE SECOND.*

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CHAPTER I.  
OF BAPTISM.

§ 1. THE essentials of Baptism are the words, “ I baptize thee in the Name of the Father, and of the Son, and The essentials of Baptism. of the Holy Ghost, Amen ” ; and water in its natural state. Although in the early Church the Apostles did baptize ‘in the Name of Christ’ to enhance the praise of His Name, at present such baptism is invalid.<sup>1</sup> A plain rule is laid down about re-baptizing sectaries. “ If a sectary comes over to the Church, let them ask him to say the Creed. If they see he has been duly baptized, let them lay hands on him that he may receive the Holy Ghost. But if he fail to confess the Holy Trinity, let him be baptized.”<sup>2</sup>

§ 2. That a sponsor is not essential to baptism is inferred from the analogy existing between carnal and spiritual birth. The person baptizing is alone requisite to the latter. The sponsor intervenes for solemnity rather than of necessity ; and was introduced because of children’s being unable to answer in the catechism. But catechizing belongs not to the essence of baptism.<sup>3</sup> Parents should not be sponsors for their own children at baptism or confirmation ; for the carnal and the spiritual or *god-father* should be distinct.<sup>4</sup>

§ 3. Immersion also is not necessarily required. It is

<sup>1</sup> Lyndwood, p. 42.

<sup>2</sup> First Council of Arles, can. 8. A.D. 314.

<sup>3</sup> Panormitan, VI. f. 215.

<sup>4</sup> Id. VII. f. 29.

enough that the baptizer pour water on the body of the  
Of Im-      baptized.<sup>1</sup> The more laudable custom is im-  
mersion.      mersion; and though dipping once suffices, to  
dip thrice is preferable, because it signifies belief in the  
Trinity, and the three days' burial of Christ.<sup>2</sup> Tertullian  
witnesses for the immersion at each Name of the Holy  
Trinity;<sup>3</sup> S. John Damascene for the symbolism of the  
three days' burial. Archbishop Wulfred A.D. 816, cites  
the example of our Lord Himself in the river Jordan for  
immersion, and forbids priests to pour water on the heads  
of infants.<sup>4</sup> It was the heresiarch Eunomius, who first  
introduced the *single* immersion in violation of Apostolic  
tradition.<sup>5</sup> This notwithstanding, S. Gregory the Great  
enjoined the Spanish Church to practice *single* immersion  
in opposition to the Arians, who asserted the inferiority of  
the Second and Third Persons to the Father, as the faith in  
the Trinity is sufficiently marked by the words.<sup>6</sup> Trine  
immersion was still ordered by the Synod of Worcester,  
A.D. 1241, and by that of Exeter, A.D. 1287. It was prac-  
ticed even in houses and in case of need; but if there was  
no danger, the child was to be baptized in church at  
Easter or Pentecost, and presented for confirmation within  
*three* years.<sup>7</sup> It was practiced under the Reformed Liturgy  
in 1551. "They sign the child with the cross on the  
breast and head, plunge it thrice in the water, and anoint  
it; but the oil is not consecrated."<sup>8</sup> The regulation of the  
old English Church enjoining Confirmation "within three  
years" agrees, neither with the modern view, that its  
design is to fortify the soul of the recipient when passions  
are supposed to acquire strength; nor again with the  
generally received one, that it is a solemn personal accept-  
ance of the baptismal vows.

<sup>1</sup> Panormitan, VI. f. 215.

<sup>2</sup> Lyndwood, p. 242.

<sup>3</sup> Adversus Praxeum, c. 26.

<sup>4</sup> Canon 11.

<sup>5</sup> Sozomen. Hist. Eccles. VI. c. 26.

<sup>6</sup> I. Epist. 1.

<sup>7</sup> Fleury, Hist. Ecclés. 1. lxxxviii. c. 42.

<sup>8</sup> Messer Daniel Barbaro's Report to the Venetian Senate.

§ 4. It is likely that S. Peter baptized, not by dipping, Of Asper- but by sprinkling; at whose preaching we read sion. that five thousand were converted in one day.<sup>1</sup>

§ 5. In early times money was given in Spain for baptizing; and the practice was forbidden by the Council of Fees for Elvira, "lest the priest should seem to barter Baptism for money, that which he had freely received."<sup>2</sup> forbidden. It was again forbidden by the Third Council of Braga A.D. 578, because many poor persons, to avoid compulsory payment, let their children remain unbaptized.<sup>3</sup> If the person to be baptized be an adult, Panormitan judges that he should forego baptism rather than pay a fee; perilously adding, that such an one is reckoned as baptized, as well from the fact of his believing, as because it is not his fault that he is not baptized. Or, he may cause himself to be baptized by a layman.<sup>4</sup>

Baptizing Priest be- § 6. A priest baptizing, though he do it by comes a spiritual obligation of his office, becomes nevertheless Father. the spiritual Father of the baptized.<sup>5</sup>

Of Bap- § 7. If a lay person baptize a child in case of tism by urgent need, say, at sea, or when a church is lay people. distant, such baptism is lawful. Yet must he bring him to the Bishop to be confirmed.<sup>6</sup> If he baptize where there is no peril of death, but with the due intention and in the form of the Church, such baptism is still valid.<sup>7</sup>

Of bap- § 8. Baptism is not regularly allowed save in tism in private churches possessed of fonts; the case of Princes houses. excepted, or where access may not be had to the church without peril.<sup>8</sup>

<sup>1</sup> Lyndwood, p. 247.

<sup>2</sup> Canon 48, whereby is also shown the use of a shell in baptizing or as a font.

<sup>3</sup> Can. 7.

<sup>5</sup> Panorm. VII. f. 31.

<sup>7</sup> Lyndwood, p. 41.

<sup>8</sup> Clementin. III. Tit. xv. c. unic. Lyndwood, p. 241.

<sup>4</sup> VII. f. 92.

<sup>6</sup> Council of Elvira, can. 44.

## CHAPTER II.

## OF CONFIRMATION.

§ 1. CONFIRMATION or the Laying on of hands, in the view of the Canon Law, is a Sacrament reserved to Bishops only; because it is regarded as the completion of Baptism. This action, then, bearing the relation to Baptism, that the confirmation of bishops does to their election, is properly reserved to the superiors, in token of pre-eminence.<sup>1</sup>

Why re-  
served to  
Bishops?

§ 2. The Greek Church allows priests to confirm, but with *chrism* consecrated by a bishop. The Schoolmen are Delegated to priests. divided on this question: Thomas Aquinas and Scotus holding that the Pope may delegate the performance to priests; Durandus and Bonaventure, followed by Estius, denying it, on the ground that what is the effect of Order cannot be conferred by Commission.

§ 3. The primitive Church used hallowed ointment in the ceremonial, to express their faith and hope that the Chrism, why em-  
ployed? recipient might "share in the royalty of Jesus Christ."<sup>2</sup> The principle of symbolism having been worked threadbare before the Reformation, this venerable relic of pure Antiquity shared the fate of things abused, and was relinquished by the Anglicans in deference to the supercilious criticism of John Calvin. Its use was revived by some of the Nonjurors, and practiced by the late Bishop Torry of Aberdeen.

§ 4. It was held that a *freeman* might at pleasure change his name, provided he had no fraudulent intention.<sup>3</sup> When a person changes his name and wills in future to be so called in every case, then no fraud is presumed.<sup>4</sup> Names of an improper character should not be imposed on children at

Of Change  
of Name  
at Confir-  
mation.

<sup>1</sup> Panorm. I. f. 95.

<sup>3</sup> Panorm. I. f. 6.

<sup>2</sup> Council of Laodicea, can. 48.

<sup>4</sup> Dominic. à S. Geminiano, f. 1.

baptism; if it be done, it should be corrected by the bishop that confirms.<sup>1</sup> It is obvious this cannot be done, if against the Law of the Realm.

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### CHAPTER III.

#### OF THE EUCHARIST.

§ 1. The holy Synod of Nice, which has bequeathed us our Communion-Creed, distinctly recognizes the Eucharist as the Christian Sacrifice; when it assigns as the reason for assembling Provincial Synods before Lent, that, the conscience of the Bishops being purged of charges affecting them, “the Gift may be offered *pure* to God”; alluding to Malachi I. 11.<sup>2</sup> It should be consecrated with humility, received with awe, and administered with reverence.

§ 2. By the Apostolic Canons no oblations are permitted to be made at the altar, except new ears of wheat, and grapes, and oil for the lamp [of the sanctuary,] and incense *at the time of the Holy Oblation.*<sup>3</sup>

§ 3. The materials of the Eucharist must be pure wheaten bread, leavened or preferably unleavened, and pure wine. In old times, some who substituted water for wine were condemned as heretics, (the *Hypocrites*, *droparastatae* or *Offerers of water*.)

In 1536, one Sir Thomas Newman priest bare a faggot at Paul’s cross “for singing mass with good ale.”<sup>4</sup>

§ 4. It is admitted by Cardinal Bona, that “from the

<sup>1</sup> Lyndwood, p. 246. Constitution of Archbishop Peckham. Gavanti, Manuale Episcoporum, 149. The Duke of Anjou, Edouard-Alexandre (afterwards Henri III. king of France,) changed his name *at confirmation* by order of the King, in 1565. (*L’Art de vérifier les Dates*, Tom. V.)

<sup>2</sup> First Council of Nicaca, can. 5.

<sup>3</sup> Can. 3.

<sup>4</sup> Holinshed’s Chronicle.

The law of celebration of, and assisting at, the Eucharist. beginning the Sacrifice was appointed to be done publicly and solemnly, the clergy *and people* standing by, offering, and *communicating*, as the very tenor of the Mass and practice of the ancient Church evince.”<sup>1</sup> And this is clear from the eleventh Apostolic Canon enacting that they “be deprived of communion, who persevere not in prayer till Mass be done, *nor receive Holy Communion*, as men who disquiet the Church.”<sup>2</sup> The Council of Trent (Sess. xxii.) *wishes* the sacramental communion of the faithful at every mass. In the absence of religious fervour, the encouragement or else the forbidding of non-communicating attendance produce results foreign to the Church’s intention.

§ 5. Common Law obliges not a priest to celebrate daily. Where he feels his fervent love towards God impelling him, he may do so. But if he perceives himself Of daily Celebration. lukewarm, it is well to abstain sometimes, that he may afterwards approach with greater devotion.<sup>3</sup> Priests may not celebrate low masses so as to encourage men to be absent from the high celebration.<sup>4</sup> There does not appear to have been Daily Communion in the Eastern Church. Socrates expressly says, “the Sabbath (Saturday) and the Lord’s Day, whereon Meetings (*συνάξεις*) are *wont* to be held in the churches.”<sup>5</sup> And Sozomen speaks of other days as those whereon Meetings were not held.<sup>6</sup> The Apostolical Constitutions enjoin Daily Prayer in the churches, implying (I conceive) Celebration on the Lord’s Day chiefly.<sup>7</sup>

§ 6. Clement V. in the Council of Vienne ordained, that “on the first Sunday of every month monks should Of monthly Communion. always communicate in monasteries; unless perchance for some reason, which they were to intimate to their monastic superiors, and either

<sup>1</sup> Rerum Liturgicar. Lib. I. c. 13.

<sup>2</sup> III. Decret. De Consecratione, Dist. i. c. 62.

<sup>3</sup> Lyndwood, p. 228.

<sup>4</sup> Theodulf, cap. 45.

<sup>5</sup> Hist. Eccles. VI. c. 8.

<sup>6</sup> Οὐ συναξίμον ἡμέρας. L. iv. c. 16.

<sup>7</sup> L. ii. c. 59.

approach or abstain according to their judgment."<sup>1</sup> Hence, I conclude, came the practice of monthly communion in parish churches, and the rubric requiring persons intending to communicate to intimate their purpose to the Curate.

§ 7. The celebrant *must* communicate, even if he celebrates more than once the same day.<sup>2</sup> The celebrant Touching (priest or bishop,) must not leave the service to be finished by another, but continue it to the end.<sup>3</sup> A priest may not celebrate alone; for the Liturgical words mark the presence of assistants.<sup>4</sup> It was ordained that not fewer than two should be present when the priest celebrates.<sup>5</sup> The Church of Rome dispenses with this rule, considering that the priest celebrates spiritually in unison with the whole Church.<sup>6</sup> The Church of England retains it, adding the obligation of actual communion, to do away with private Masses. Cases occur, where some latitude might prudently be allowed. In early times it was ordered that at the celebration the people depart not till the solemnity be over.<sup>7</sup> Archbishop Cuthbert A.D. 747, ordains that "boys be admonished *often to communicate*, while they are yet uncorrupted by evil desires."

§ 8. Whereas, according to S. Augustine, "no one should eschew the Sacraments of God, whether administered by a good or evil man";<sup>8</sup> and we all are familiar with the proposition, "The effect of Christ's ordinance is not taken away by the wickedness of the minister";<sup>9</sup> yet decrees of Pontiffs (Gregory VII. and Urban II.) forbid the Faithful

<sup>1</sup> Clementin. III. Tit. x. c. 1.

<sup>2</sup> Twelfth Council of Toledo, can. 5. A.D. 680.

<sup>3</sup> Council at Rome, can. 14. A.D. 744.

<sup>4</sup> Council of Mayence, can. 43. A.D. 813.

<sup>5</sup> Decret. De Consecratione Dist. i. c. 61.      <sup>6</sup> Reiffenstuel, VI. c. 40.

<sup>7</sup> First Council of Orleans, can. 26. A.D. 511. That of Agde, A.D. 506, (can. 46,) specifies 'on the Lord's Day.'

<sup>8</sup> Contra literas Petiliani, l. III. c. 9.

<sup>9</sup> Article XXVI.

receiving at the hands of simoniacal, adulterous, or highly criminous priests. There is no substantial difference herein. The Popes, acknowledging that Sacraments ministered by such men are holy and venerable and valid, enjoin abstention from receiving, in order to discourage sin, and that shame arising from popular contempt may recall the ministers to repentance.<sup>1</sup> The Anglican Church, while dwelling on the reality of *consecration* of holy Mysteries, points at the same time to the need of inquiry, trial, and deposition of Ministers when *proved* ‘evil.’ When Discipline is in abeyance, the matter seems to be left to the *conscience* of the flock which is afflicted by a false shepherd. But let us bear in mind the warning of Pope Nicolas the First; “Before an accusation is proved, suspend no one from communion; for the accused is not forthwith guilty, but he who is convicted is criminal.”<sup>2</sup> As to the Sacraments of heretics and schismatics, all are agreed, that while they have the *form*, they possess not the *power* of valid Sacraments, until the ministers and recipients return to Catholic unity.<sup>3</sup> “Receive not penance and communion save from a Catholic priest,” says the Synod of Beneventum, A.D. 1087; “if such be not found, better remain without the Communion, and receive It from our Lord invisibly.”<sup>4</sup>

§ 9. Closely connected with the subject of the last section is the evil practice of evening Communion, lately introduced amongst us; which violates the 48th canon of the Third Council of Carthage, ordering priests to celebrate fasting, save on Maundy Thursday. The church historian Socrates notices it as peculiar to certain Egyptians, who “partake of the Mysteries, *not as is the custom with Christians*; for they do so about evening time, when they have feasted and glutted themselves with all sorts of meats.”<sup>5</sup> If priest and com-

<sup>1</sup> I. Decret. Dist. xxxii. c. 6.

<sup>2</sup> II. Caus. xv. qu. 8. c. 5.

<sup>3</sup> I. Dist. xxxii. c. 6.

<sup>4</sup> Fleury, Hist. Ecclés. l. lxiii. c. 35.

<sup>5</sup> Hist. Eccles. V. c. 22.

municants remained fasting, they might well celebrate at noon or vespers ; for our Lord Himself instituted the Sacrament in the evening, and expired at the ninth hour.<sup>1</sup>

Of Celebration in an unconsecrated building.      § 10. The Divine Mysteries may, by license of the Bishop, be celebrated in a church not yet consecrated.<sup>2</sup>

## CHAPTER IV.

### OF PENANCE.

§ 1. THE discipline of the primitive Church is not in keeping with the circumstances of modern Churches and

Contrast of ancient and modern times.      the loss of that “open Penance,” which the Anglican Church yearly professes to deplore and to desire its restoration.<sup>3</sup> Its rules are so

numerous, as to form the basis of a scientific induction ; an offshoot, I may term it, of the Canon Law, called *Casuistry*, which should engage the serious study of such “discreet and learned Ministers,” as are desirous of affording penitents “the benefit of Absolution, together with ghostly counsel and advice.”

Again, a spirit of holy rigour pervades them, beyond the tolerance of our lax condition. Our clergy, by reason of their secular surroundings, are not prepared to administer such stringent discipline.

Yet further, I must observe that the early Christians were influenced by the institutions of their time, greatly at variance with the ruling ideas of modern Society. Thus, we find the Council of Elvira in Spain, A.D. 305, ordaining that an adulteress wilfully quitting her husband to marry another be denied communion even at her last hour (Canon

<sup>1</sup> Cardinal Humbert, in his Reply to the Greeks.

<sup>2</sup> Panorm. VI. f. 234. III. Decretal. Tit. xl ix, c. 9.

<sup>3</sup> The loss ‘in most places’ is stated by the Council of Châlons, can. 25. A.D. 813.

8;) while a mistress, who has beaten her slave girl so as to cause her death, is admitted to communion after seven years. (Canon 5.) So, the crime of murder, when palliated by the system of slavery, is more lightly punished than that of adultery. As a rule, the ancient casuists were guided by the authority of the Mosaic law; therein following our Lord, Who declared He had come to fulfil, not destroy, it. And so, when the Church of England speaks generally of "slander, malice, adultery and other grievous crimes," she plainly refers to the Law of Charity, which is violated by sin of any kind; and tacitly remits the 'learned minister' to his studies for guidance in particulars. It doth not become those who every Ash-Wednesday desire the restoration of the 'godly discipline' of 'the Primitive Church' to denounce the mild alternative of Auricular Confession; nor yet the 'discreet and learned minister' to act as Confessor, if indeed he lacks the qualifications attributed to him.

But the Church of England requires a Minister, who takes upon him to repel a sinner from communion, to signify the case to the Ordinary or Bishop of the diocese; apparently leaving it thenceforth to the episcopal discretion. This arrangement fails, in that it favours the autocracy of an individual Bishop. Not so the First and most most authentic Council of the Church Universal, which distinctly recognizes that persons may be debarred from communion through the Bishop's "pusillanimity or contentiousness or other unpleasantness";<sup>1</sup> and proceeds to apply a remedy; ordaining that such questions be examined in the Provincial Synods assembled twice a year before Lent and in autumn.

§ 2. The primitive Church subjected to open penance  
Of public those who were guilty of idolatry, murder,  
or open adultery, and such sins as were capitally pun-  
Penance. ishished by the civil Law.<sup>2</sup> Public penance could

<sup>1</sup> First Council of Nice, can. 5.

<sup>2</sup> Natalis Alexandri Opp. Tom. III. p. 637.

take place once only, lest it should be disregarded. A priest or deacon guilty of crimes calling for removal from the ministry was not to be subjected to it.<sup>1</sup> Sins of thought simply or evil desires were not punished with canonical penance; it being presumed that grace hindered their actual completion.<sup>2</sup> But they who were guilty of *secret* sins, on confession, were to abstain from communion till they had completed the time of penance assigned them.<sup>3</sup> Whereas by the statutes of the Civil and of the Canon Law persons who have confessed touching themselves were not to be questioned as to the complicity of others; so, (saving the charge of high-treason,) a man's perilous confession of his own guilt was not to be admitted against any one.<sup>4</sup> Morinus thinks that *public* Penance grew out of use, as the Christian Emperors increased the number of offences visited with capital punishment.<sup>5</sup> In case of any person whatsoever (being a baptized Christian) demanding to partake of the Eucharist on the point of death, the Bishop was (on examination) to communicate him.<sup>6</sup> This was allowed even to apostates from the Faith.<sup>7</sup> The ancient penances have never been abrogated by Popes or Councils. They have simply fallen through by the negligence and ignorance of the clergy, and the indifference of the laity. The Crusades, with the Indulgences then granted, dealt a mortal blow to discipline.<sup>8</sup>

§ 3. Wilful apostasy, consulting diviners &c. merited exclusion from communion and penitential discipline *of the Apportion-  
ment of Penance.* *during life.* Voluntary homicide, abandonment of an infant by the mother, robbery with violence, poisoning, magic, merited *twenty years'* exclusion. Adultery and other grievous fleshly

<sup>1</sup> Fifth Council of Carthage, can. 11.

<sup>2</sup> Council of Neo-caesarea, can. 4.

<sup>3</sup> S. Basil. Canon 34.

<sup>4</sup> Decret. Greg. II. Tit. xviii. c. 1.

<sup>5</sup> De Administratione Sacram. Poenitentiae, L. II. c. 10. *ed.* Bruxellis, 1685.

<sup>6</sup> First Council of Nice, can. 5.

<sup>7</sup> S. Basil. can. 73.

<sup>8</sup> Fleury, Discours 6<sup>me</sup>.

sin, and apostasy under bodily compulsion, *fifteen* years. Involuntary homicide, rifling graves, perjury, *ten* years; fornication, *four*; larceny *two*. A clerk is punished simply by deposition from holy orders without hope of recovery, and does no open penance: a layman, on performance of penance, recovers his former status.<sup>1</sup> The Sixth Council of Toledo A.D. 638 for the first time enjoined the Bishop to force persons submitted to public penance to perform it against their will under penalty.<sup>2</sup> Penance should be imposed according to Scripture and the custom of the Church; sinners should not be flattered by light and novel penances for great sins, nor *encouraged to do alms to blot out their sins*.<sup>3</sup>

§ 4. In the bad period of the eleventh century a man might commute a day's fasting on bread and water by Mediaeval singing fifty psalms in church on his knees, pro-abuses. vided he fed a poor person the same day. An hundred genuflexions might do instead of the psalms; and the rich might redeem the whole with money. A notable expedient for making heaven more easily won by the rich than by the poor.<sup>4</sup> Where religious communities, fearing righteous application of Penance from virtuous priests, enforced confession to their chaplains, the bishop was enjoined to assign them chosen confessors.<sup>5</sup>

§ 5. On the subject of the relative enormity of the sins which called for Penance, the rules of the churches varied greatly. Not only do we discover traces of the influence of the Civil Law of the period, but we applied. find S. Basil distinctly alleging *Custom*, and professing his inability to justify the unequal measure dealt to an offending husband and to his erring wife.<sup>6</sup> While Polygamy is denounced as “bestial and unbecoming men,” the penance is limited to *four* years.<sup>7</sup> Horrible cases of incest merit only *eleven* years;<sup>8</sup> while adultery is punished with

<sup>1</sup> Canons of S. Basil.

<sup>2</sup> Canon 7.

<sup>3</sup> Council of Châlons, can. 38. A.D. 813.

<sup>4</sup> Fleury, Hist. Eccl. l. lviii. c. 52, citing Burchard bishop of Worms.

<sup>5</sup> Council of Paris, can. 7. A.D. 1212.

<sup>6</sup> Canon 21.

<sup>7</sup> Canon 80.

<sup>8</sup> Canon 67.

fifteen, and a married man sinning with a spinster is not treated as an adulterer.<sup>1</sup> Simple larceny is let off by almsgiving, or by bodily labour, where the thief cannot otherwise give satisfaction.<sup>2</sup> S. Augustine complains that so sacrilegious an excess as revelling and drunkenness on the solemnities of the Martyrs was overlooked and escaped penance.<sup>3</sup> Where Alexander III. suspends from celebrating a clerk who threw stones in self-defence, yet without hitting any one; S. Gregory suspends only for two months a bishop who had ordered a woman to be cruelly flogged, so as to cause her death eight months after.<sup>4</sup>

§ 6. When the sin of a penitent is public, and so notorious as to have agitated the whole Church, the Bishop, praying for his restoration, is to impose Of the his hand on him before the sanctuary.<sup>5</sup> Public Reconcili- reconciliation is, when penitents are thus pre- lation of sented to, and reconciled by, the Bishop during Penitents. Mass; which a priest may not do.<sup>6</sup> Private reconciliation is in case of private sins, or even public, if the penitent be on the point of death; and may be done by a priest with the Bishop's cognizance.<sup>7</sup>

§ 7. It is in dealing with Penance, that we discover what the primitive Church understood by *Conversion*. Not the lip-profession of canting hypocrites, not Of Con- the fitful zeal of a transient enthusiasm, but version, ancient and modern. "the exhibition, in deed, not in show, of an inward change by fear and tears and patience and good works"; so that, even where a penitent was enjoined thirteen years' penance, on the lapse of three the Bishop was empowered to examine his disposition and deal more mercifully with him, if he saw occasion.<sup>8</sup>

§ 8. Some have referred to the figurative act of Christ,

<sup>1</sup> Canon 21.

<sup>2</sup> S. Greg. Nyssen.

<sup>3</sup> Epist. xxii.

<sup>4</sup> Decret. Greg. V. Tit. xxv. cc. 2, 3.

<sup>5</sup> Third Council of Carthage, canon 32.

<sup>6</sup> Second Council of Carthage, can. 3.

<sup>7</sup> Ibid. can. 4. II. Decr. Causa xxvi. qu. 6. capp. 1, 3, 14

<sup>8</sup> First Council of Nicaea, canon 12.

when He said to the lepers whom He had cleansed, “Go ye and shew yourselves to the priest,” as the authority for auricular Confession. Others cite the words of S. James, “Confess your sins one to another.” But Panormitan prefers the opinion, that it came by a certain general tradition of the Church; for there is no clear authority implying that Christ appointed Confession to be made to a priest. Whence the Greeks, he adds, do not sin in not using Confession (for they confess to God Alone in secret;) because this institution has not spread among them.<sup>1</sup> It was first enjoined by the Fourth Council of Lateran, A.D. 1215, (canon 21,) that every person of age should confess once a year to his parish-priest; and that, in consequence of the spread of the Albigensian heresy, which practised a sham confession to their ‘Good Men,’ called *Consolation*. Panormitan points out that the knowledge possessed by a parish priest of the persons and character of his parishioners renders him, “provided he be intelligent,” best qualified to receive their confessions. “And I believe they gain more by confessing to him than to a stranger, for they are more ashamed; and shame is the chief part of penitence.”<sup>2</sup>

§ 9. Canonists hold that Confession is grounded on precept, not on the need of a remedy experienced by the penitent.<sup>3</sup> It is made in order to exhibit penitence, not to impetrare pardon: and as Circumcision was given to Abraham in token of righteousness, not as a cause of justification; so Confession is made to the priest, not to procure remission, but in sign of pardon received.<sup>4</sup> If need be, it may be made to God Alone.<sup>5</sup> Confession made to Him purges sins: when made to the priest, teaches how they may be purged.<sup>6</sup> It helps us, in

<sup>1</sup> L. VII. f. 256.

<sup>2</sup> Ibid. f. 158.

<sup>3</sup> Lyndwood, p. 236.

<sup>4</sup> Decret. II. De Poenitentia, Dist. 1. c. 37.

<sup>5</sup> Theodori archiep. Cantuar. c. 35.

<sup>6</sup> Second Council of Châlons, c. 33.

that receiving wholesome counsel from him we do away the stains of sins by most salutary observances of penance or by mutual prayers.<sup>1</sup> But Origen, like the Church of England, leaving the choice of a confessor to the penitent, warns him first to try the spiritual physician, whether he be skilled as well as merciful.<sup>2</sup>

Caution respecting it.      § 10. A sin is not revealed in Confession by a person's merely saying to a friend, 'I tell you this in confession'; but it must needs be that he say it to the saving of his soul.<sup>3</sup>

§ 11. Let the priest hear confessions in church in the view of all, and never those of women in secret, save in a necessary case as of sickness. Nor enjoin such penance on married parties as to cause the one to be suspected of grievous crime by the other. Nor enjoin penance for sins unrepented of, (in which case absolution cannot be given;) nor yet absolve without requiring restitution and satisfaction in cases which admit of the same. Nor enquire of his penitents concerning other men's sins or ask the names of their partners in sin; for Confession relates to a man's own, not others' sins.

Rules concerning private or auricular Confession.      Let no priest discover any man's confession by signs or words, in general or in particular, or from any motive whatsoever. Nor betray the sinner by word or sign. But if he needs more wary counsel, or is in doubt as to gross or atrocious crimes, let him cautiously seek it without expressing the person in question; meanwhile warning the penitent to do all possible good that God may guide his repentance. A priest divulging confessions rendered himself subject to degradation without hope of recovery;<sup>4</sup> and (by the Council of Lateran) was to be thrust into a strict monastery to do perpetual penance.<sup>5</sup> A priest may

<sup>1</sup> Theodulfi episc. Aurelianens. cap. 30. A.D. 797.

<sup>2</sup> In Psalm. xxxvii. Homilia 2.

<sup>3</sup> Panorm. VII. f. 76.

<sup>4</sup> Constitution 8th of Archbishop Reynold, A.D. 1322.

<sup>5</sup> Decret. Greg. V. Tit. xxxviii. c. 12.

not, by the Canon Law, be compelled by laymen to reveal, were it a theft, told him in confession.<sup>1</sup>

The modern English Church makes no reliable provision for the maintenance of the aforesaid conditions to Auricular Confession; and thereby invalidates her own Rule laid down in the Office for Holy Communion.

There must be equity and reciprocity in spiritual as in civil compacts; for the Lord pronounces woe on those who bind burthens on others, which they themselves will not bear. "For nothing but example teaches men in general the benefit of good laws. Nor did secret penance ever get the force of a general law but by example."<sup>2</sup>

With us bishops are presumed (whatever their antecedents) to be above question or correction. Not so in the ancient Church. "What if a bishop say that such an one has confessed a crime to him, and the other deny it, the bishop is not to be solely believed. If he say his conscience will not allow him to communicate with the accused, other bishops should not hold communion with that bishop."<sup>3</sup>

§ 12. Why Confession, followed by Penance open or private, hath been left to the choice of her members by the  
Why Pen-  
ance and  
Confes-  
sion left  
optional  
in the  
Anglican  
Church ?

Anglican Church is doubtless owing to the laxity of discipline at the period of the Reformation. Yet some fair reasons are adduced to excuse the existing state of things.

1. Whereas the Church of Rome demands not the confession save of such sins as the penitent can fairly recall to mind, the remission of the sins he confesses not is presumed to follow on the restoration of a truly Christian disposition in him.

2. The practice of the ancient Church in not exacting penance of a criminous clerk, his loss of rank by degradation being deemed enough.

3. Its practice of reconciling heretics and schismatics

<sup>1</sup> Ibid. Tit. xxxi. c. 13.

<sup>2</sup> Thorndike, Epilogue, III. c. xi. § 22.

<sup>3</sup> Council of Carthage, can. 133. A.D. 419.

to the unity of the Church by shoals, without penance ; and most notably, the act of the See of Rome in reconciling England to its communion in the reign of Queen Mary, when the blessing of the Church was given them, who could not be induced to restore the Church property seized by Henry the eighth.<sup>1</sup>

## CHAPTER V.

## OF UNCTION OF THE SICK.

DOWN to A.D. 850, the mystery or sacrament of Unction of the sick by the presbyters of the Church was regarded as an Ordinance, whereby in answer to the prayer of faith “ sins are remitted and consequently bodily health restored.”<sup>2</sup> It was not *Extreme Unction* even in the ninth century, but was said to be “ a remedy for body and soul.”<sup>3</sup> “ Neither is there any cause, why the same benefit should not be now expected, *but the decay of Christianity in the Church.*”<sup>4</sup> Thorndike’s maturest judgment respecting it was, that “ it is nothing else but a branch of penance, that is exercised upon them that lie in danger of death.”<sup>5</sup> ‘ Extreme unction’ was administered in England under the First Liturgy of Edward VI. “ with unconsecrated oil,” A.D. 1551.<sup>6</sup>

<sup>1</sup> Thorndike, Epilogue, III. ch. x. §§ 30, 31, 32, 38.

<sup>2</sup> Synod of Pavia, can. 8.      <sup>3</sup> Council of Châlons, c. 48. A.D. 813.

<sup>4</sup> Thorndike, Just Weights &c. chap. xviii. § 8.

<sup>5</sup> Works, Vol. V. p. 562.

<sup>6</sup> Barbaro’s Report to the Venetian Senate.

## CHAPTER VI.

## OF MATRIMONY.

The Christian Law of Marriage.

§ 1. IT is impossible for any reasonable man to imagine, that so difficult a law as for a man to be tied to one wife indissolubly could have taken effect among Christians, had it not been received from the beginning for a part of that Christianity which our Lord delivered to the Church; nor that it could have been preserved so inviolable as it hath been but by the Church.<sup>1</sup> Whence follow two consequences. First, that, as Christianity enhances the scope of Moses' Law throughout by enforcing the spiritual reason which exceeds the letter, so that we find divorce forbidden by the Law of Christ where it is allowed by that of Moses, therefore Christians cannot be regulated merely by the latter in causes matrimonial, nor do the Church's prohibitions depend simply on interpretations of Leviticus.<sup>2</sup> Secondly, that the Church hath always had the approbation of marriages within certain bounds, which the holiness of Christianity requires of its professors beyond the religion of Jews or Gentiles.<sup>3</sup>

§ 2. Espousals of infants in the cradle are null.<sup>4</sup> It is not required, that a son should contract with the consent or knowledge of his father. Compulsion, exercised by the parents, impedes the virtue of Of Marriage contracts. matrimony; for parents cannot even by the Civil Law force their children to contract it.<sup>5</sup> Any condition of a nature to suspend or undo matrimony impedes it; yea rather, in that case, it is no matrimony.<sup>6</sup> To avoid adultery

<sup>1</sup> Thorndike, Epilogue, III. c. 13. § 3.

<sup>2</sup> Id. Just Weights &c. c. 18. § 9.

<sup>3</sup> Id. Works, Vol. vi. p. 40. ed. Oxford.

<sup>4</sup> Decret. Greg. IV. Tit. ii. c. 4.

<sup>5</sup> Panorm. VII. f. 7.

<sup>6</sup> Ibid. f. 22.

the contracting parties must not be of too unequal an age.<sup>1</sup> A promise of marriage made without witnesses is null.<sup>2</sup>

§ 3. The sole consent of the contracting parties suffices to the substance of the bond of matrimony.<sup>3</sup> If a son, forced out of regard to his father, has contracted matrimony with one whom he would not otherwise null. have contracted with, the contract holds: not so, if intimidation were employed. By Canon Law a daughter is not bound to consent to an engagement contracted by her father; for matrimony contracted by her without her father's consent holds. (Not so, if under age, according to S. Basil.) Whence it is maintained, that a daughter, in using the liberty thus allowed her, does not incur the sin of ingratitude, in such wise as to justify her father in disinheriting her; unless indeed she chose an unsuitable husband, ("moribus suis indignum.")<sup>4</sup>

§ 4. Whereas it is dangerous to contract unlawful marriages, because of the sin, and of the illegitimacy of the children, it is meet that a marriage be solemnly published in church; and it ought to be done in the church near which the parents of either party reside; for they best know their kinsfolk, that is, whether the contracting parties be within the prohibited degrees of consanguinity or affinity;<sup>5</sup> and there certain knowledge may be had, whether the parties have contracted with others.<sup>6</sup>

§ 5. The delivery of the ring doth not of itself denote any contract, but is governed by the words preceding. If those words imply contract of matrimony, the putting on of the ring declares the fact; and it should be put on the woman's fourth finger,

<sup>1</sup> Council of Friuli, c. 9. A.D. 792.

<sup>2</sup> Council of London, c. 22. A.D. 1102.

<sup>3</sup> Panorm. VII. f. 7. Decret. Greg. IV. Tit. i. c. 14.

<sup>4</sup> Panorm. VI. f. 14.

<sup>5</sup> Innocent. *sup. Dece.* f. 179; founded on a canon of the Council of Lateran.

<sup>6</sup> Lyndwood, p. 274.

because, as it is said, there is a vein there that extends to the heart; therefore the ring is put on in token of mutual love.<sup>1</sup>

**§ 6.** A marriage is said to be contracted ‘in the face of the church,’ when the solemnity of banns is observed.<sup>2</sup> In England, it was done “at the church door.”<sup>3</sup> Marriage in the face of the Church. Or, as in Lombardy and Venice, where banns were not used, it meant, when friends of the parties were assembled and no one excluded.<sup>4</sup>

**Marriages not to be in Lent.** § 7. The celebration of weddings or of birthdays is forbidden in Lent.<sup>5</sup>

**Of clandestine Marriages.** § 8. A marriage is clandestine, says Lyndwood, if it be without witnesses, and if the bride be not demanded of him at whose disposal she is. Persons, who cannot of right be married by reason of just impediments known where they reside, remove for a time to distant places and populous towns, and there procure marriage between them to be celebrated *de facto*: such persons, by a Constitution of Archbishop Stratford A. D. 1343, incur the sentence of excommunication *ipso facto*. The offspring of a clandestine marriage, afterwards approved by the Church, is reputed legitimate. A solemnity, at first omitted, may afterwards be supplied; but matrimony ought not to be repeated, because it holds good from the beginning.<sup>6</sup>

**Rule respecting the same.** § 9. The parties who marry clandestinely, when one or both deny the fact, and the legitimate proof be therefore not apparent, are not compelled by the Church to cohabit; and if they publish

<sup>1</sup> Panorm, f. 17.

<sup>2</sup> Joan. Anton. De S. Georgio, Praepos. Mediolan. *sup. IV. Decretal.* f. 112.

<sup>3</sup> Constitution of Peter Quivil bishop of Exeter, A.D. 1287.

<sup>4</sup> Petrus De Ancharano *sup. Decret. Greg. IV. Tit xvii. f. 44.*

<sup>5</sup> Council of Laodicea, can. 52. A.D. 320? [Charles Brandon, Duke of Suffolk, apologizing to Cardinal Wolsey for his marriage with Mary the French Queen, writes; “Me lor, they marre as wyell in Lynt as howth of Lent wyet lyssenes of anne boussope.” March 5. 1515. (Calendar of State Papers.)]

<sup>6</sup> Petrus De Ancharano *sup. IV. Deer. Greg. Tit. xviii., f. 40.*

their marriage, it will be approved of as if it were done in the face of the Church, unless there underlies some reasonable cause or hindrance.<sup>1</sup>

§ 10. The Church according to her duty may compel either man or wife, who have separated without lawful cause, to come together and to treat each other with conjugal affection. And this the Church doth for fear of adultery, which is dreaded from the severing of cohabitation.<sup>2</sup> Where the wife seeking separation dreads the violence of her husband, she is not to be restored to him.<sup>3</sup>

Condonation of adultery not necessary. § 11. A husband is not bound to be reconciled to his adulterous wife, even when reformed. If however he spares her for God's sake, the laws praise him, but not the report of the world.<sup>4</sup>

§ 12. In case of impotency &c. the Church winks at rather than tolerates a fresh marriage. While admitting of that necessity often breaks a law, sentence is Divorce. not to be given on doubtful points.<sup>5</sup> When the parties are alike guilty of adultery, the Canon Law forbids their divorce or separation.<sup>6</sup> Among the lawful causes of divorce, the Eastern Church allowed a man to be separated from his infidel or heathen wife, when she could not be induced to follow his example and be baptized.<sup>7</sup>

Marriage of adulterous parties. § 13. If a person, his wife being dead, contracts with one whom he has carnally known in the wife's lifetime without an engagement to marry her, the marriage is valid: provided neither party has practised to procure the death of the deceased.<sup>8</sup>

§ 14. Be it noted, that whereas the Civil Law allowed

<sup>1</sup> Panorm. VII. f. 18. Decr. Greg. IV. Tit. iii. c. 2.

<sup>2</sup> Panorm. VII. f. 9.

<sup>3</sup> Decret. Greg. II. Tit. xiii. c. 13.

<sup>4</sup> Petr. De Ancharano *sup. Deer. Greg.* III Tit. xxxii. f. 147.

<sup>5</sup> Archbishop Ecgbriht of York.

<sup>6</sup> Decret. Greg. V. Tit. xvi. c. 7.

<sup>7</sup> Balsamon in Concil. Trullan. can. 72, *apud* Beveregii Synod. I. 243.

<sup>8</sup> Panorm. VII. f. 26. Decret. Greg. IV. Tit. vii. c. 6.

the injured party in the case of adultery followed by divorce to marry again, the Church, regarding Matrimony as a Sacrament in so far as it typifies the union between Christ and His Church, did not sanction a fresh marriage in the lifetime of the guilty party; seeing the Lord doth not discard His spouse, though she sin grievously. Yet went she no further than to recommend a *young* Christian husband (if possible) not to take another in the lifetime of his sinning spouse.<sup>1</sup> S. Basil excuses a husband forsaken by his wife, if he marries another; and in case of his reconciliation with the first wife, the second is not regarded as an adulteress but may marry again.<sup>2</sup> While an injured husband ought to quit his erring spouse, the injured wife might not quit her husband on any pretext, whether of adultery or ill-treatment or waste of her goods or difference of religion. But *custom* only, not sound reason, was alleged for this.<sup>3</sup>

§ 15. The rigour of the early Church, at least in the West, is shown by the Council of Elvira A.D. 305, forbidding the union of Catholic maidens with Jews, Mixed marriages. heretics, or schismatics, on the ground that there can be no fellowship between the believer and the unbeliever.<sup>4</sup> Christian maidens marrying heathens were to be refused communion for a season.<sup>5</sup> This might apply in our colonies, where there is an influx of Chinese, for instance. The Council of Agde allows the marriage of Catholic maidens with heretics, on condition of the husbands engaging to become Catholics.<sup>6</sup>

§ 16. S. Gregory the Great decides, that while they of the second degree, that is, first cousins, ought wholly to abstain from each other, the distance of three or four generations was necessary to lawful Christian marriage; grounding his judgment

<sup>1</sup> Council of Arles, can. 10. A.D. 314; at which three British bishops, Ivor, Rhystid, and *Adelphius*, assisted.

<sup>2</sup> Canon 35.

<sup>3</sup> Canon 9.

<sup>4</sup> Canon 16, *ap. Labbei Concilia*, I. col. 1151.

<sup>5</sup> Council of Arles, can. 11.

<sup>6</sup> Canon 67.

on Leviticus xviii. 6. Yet Communion was not to be denied to such as had so married before their baptism.<sup>1</sup> The principle which underlies the ancient prohibition of the marriage of first cousins is thus expressed by S. Justin Martyr: Christians “in their lives surpass the laws.”<sup>2</sup> And by S. Augustine: “Even an allowable action was shrunk from, by reason of its nearness to what was unlawful.”<sup>3</sup> The Emperor Theodosius first forbade such marriages under severe penalty, for which he is commended by S. Ambrose; and even by a heathen, Aurelius Victor, in remarkable terms, treating the law as “a concession to chastity and continence.” It was repealed in the East by Arcadius and Justinian, but continued in the West.

§ 17. Whereas the Canon Law prohibits the contract of marriage between persons who are joint-sponsors at the baptismal font or between them and their god-children, the Church of England takes no notice of the case; and Thorndike even attributes the prohibition to times, “when superstition and usurpation took place in the Church.”<sup>4</sup> But, surely, the avoiding the nearness to what is unlawful, which told against first cousins marrying, should operate against the union of a sponsor and his or her god-child. It is unpleasant to be told by a clergyman, (I refer to a fact,) that he had married his *god-daughter*.

§ 18. The feeling of the Church touching even a second marriage was, that it was a weakness. Therefore priests were forbidden to assist at the wedding feast in such cases. “It is plain, that civilized people have always had them in esteem, that have staid at their first marriage. No marvel then if the laws of the Church set a mark upon it which civility disesteemeth.”<sup>5</sup> S. Jerome, indeed, says, “I do not condemn them that marry twice or thrice, and (if it may be said) eight times.”<sup>6</sup>

<sup>1</sup> V<sup>th</sup>. Answer to Augustine.

<sup>3</sup> De Civitate Dei, XV. c. 16.

<sup>5</sup> Thorndike, Epilogue, III. c. 32. § 30.

<sup>2</sup> Epist. ad Diognetum.

<sup>4</sup> Works, Vol. V. p. 568.

<sup>6</sup> Contra Jovinianum.

But this seems a mere outburst of indignant oratory. For the Council of Neocaesarea imposes penance on successive marriages.<sup>1</sup> Provided the *second* marriage was not clandestine, the parties were after a little time admitted to communion by *indulgence*.<sup>2</sup> S. Ambrose merely says, “We do not forbid second marriages, but we approve not of oft-repeated marriages.”<sup>3</sup> Eight centuries later, Alexander III. even suspends from his office a chaplain who had blessed a *second* marriage.<sup>4</sup> The wife of an absent husband may not lawfully marry, till she has received certain intelligence of his decease.<sup>5</sup>

§ 19. Things done by a man, who has changed his religion, are judged by his former law, not by the later.

*Marriage of polygamists.* Thus, where a man has contracted with many wives simultaneously, or after repudiating his lawful wife has contracted with another, the children born of such persons before conversion are held legitimate. Although it be not so in truth, yet because they believe the marriage binding and their offspring legitimate, the Church herein follows their opinion, *as far as relates to the period preceding their conversion*; because they were not then bound by canonical constitutions.<sup>6</sup>

*Retro-spective action of Matrimony.* § 20. Children born of a concubine before contract of matrimony were esteemed legitimate by marriage subsequently contracted with her. For, by a legal fiction, it had a retrospective influence.<sup>7</sup> But this did not apply to the spurious offspring of an adulterer.<sup>8</sup>

§ 21. The First Council of Toledo A.D. 400 rules that a man keeping faithful to one woman, call her ‘wife’ or

<sup>1</sup> Canon 7.

<sup>2</sup> Council of Laodicea, can. 1.

<sup>3</sup> De Viduis, L. I. c. 11. Tom. II. f. 203.

<sup>4</sup> Decret. Greg. IV. Tit. xxi. c. 1.

<sup>5</sup> Ibid. Tit. i. c. 19.

<sup>6</sup> Petrus De Ancharano *sup. Decr. Greg.* IV. Tit. xviii. f. 44.

<sup>7</sup> Ibid. Tit. xvii. c. 6.

<sup>8</sup> The principle above laid down, as to legitimisation, provoked the famous declaration of the English Barons, “Nolumus leges Angliae mutari.”

'concubine,' is not to be repelled from communion.<sup>1</sup> This arose from the Civil Law disallowing marriage between Of Concubinage, or <sup>certain classes.</sup> The Church, holding to the Law of Nature, allowed every union so long as it was sole and perpetual.<sup>2</sup> S. Augustine supports this view, saying, "Perhaps this (kind of union) may without impropriety be termed marriage, if it holds between the parties to the death of one of them."<sup>3</sup>

§ 22. S. Basil thus expresses the mind of Antiquity. "Do not, O man, make their aunt the stepmother of thy infants, nor arm with unrelenting jealousies her, who in a mother's room is bound to cherish them. For the hatred of stepmothers pushes enmity even after death. If a man wants to marry lawfully, the whole world is open to him. But if his pursuit be prompted by passion, for this reason let him be yet more precluded, that he may learn to possess his vessel in sanctification."<sup>4</sup> The Council of Elvira sentences the guilty party to five years' excommunication.<sup>5</sup> In the case of a woman's marrying her deceased husband's brother, she was only to be restored at death.<sup>6</sup> The marriage of a man with his brother's widow is forbidden by the First Council of Orleans, A.D. 511;<sup>7</sup> but allowed by Innocent III. to the new converts of Livonia, save only on the condition expressed in the Law of Moses.<sup>8</sup>

The Council of Yenne A.D. 517 declares incestuous marriage with a sister-in-law, mother-in-law, daughter-in-law, uncle's widow, cousin-german; (and by like reason as to the corresponding males;) and forbids their admission to penance before separation.<sup>9</sup> A living Prelate has eloquently expressed the object of these restrictions, from a modern and *subjective* point of view, as being "to create a conse-

<sup>1</sup> Canon 17.

<sup>2</sup> Fleury, Hist. Ecclés. L. XX. § 48.

<sup>3</sup> De Bono Conjugali, c. v. § 5.

<sup>4</sup> Canon 87, *apud* Beveregii Synodic. II. f. 141.

<sup>5</sup> Canon 61.

<sup>6</sup> Council of Neo-caesarea, canon 2.

<sup>7</sup> Canon 18.

<sup>8</sup> Decret. Greg. IV. Tit. xix. c. 9.

<sup>9</sup> Canon 30.

crated circle within which there shall be the warmest, deepest, and strongest affection, but never the slightest touch or breath of passion.”<sup>1</sup>

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## CHAPTER VII.

### OF THE CONSECRATION OF TIMES.

§ 1. THE Lord’s Day succeeds in the room of the Old Testament Sabbath, not indeed (as Thomas Aquinas saith) by force of Divine precept, but by the constitution of the Church and the custom of Christian people. Therefore the prohibition of work on the Lord’s Day is not so strict as it was on the Sabbath; but some works are allowed on the one, which were forbidden on the other, as the dressing of meat and the like.<sup>2</sup> The Third Council of Orleans, A.D. 538, censures as “a Jewish rather than Christian observance” the notion that one should not drive a carriage, or ride, or prepare food, or dress one’s house or person on the Lord’s Day. It however forbids rural work, ploughing, or any employment hindering attendance at church.<sup>3</sup> The Sixth of Arles, A.D. 813, orders that no markets or law-suits take place on Lord’s Days; “those things alone being done, which belong to God’s worship and service.”<sup>4</sup> “If there be *need* of sailing or journeying, license is granted; in such wise however, that by reason thereof Mass and Prayers be not omitted.”<sup>5</sup> The Emperor Constantine, indeed, while by edict of March 6. 321, he ordered the closing of law-courts in the towns, yet allowed necessary harvest-labour. Pope Alexander III. extends this allowance to the capture of herrings, if need be, save on the

<sup>1</sup> Speech in House of Lords, June 29, 1883, by Dr. Fredk. Temple, Lord Bishop of Exeter.

<sup>2</sup> Lyndwood, p. 56.

<sup>3</sup> Canon 28.

<sup>4</sup> Canon 16.

<sup>5</sup> Theodulph bishop of Orleans (A.D. 797,) Capitular. 24.

greater Festivals.<sup>1</sup> In no respect does modern religion, influenced by Puritan tradition, so widely depart from the Primitive and Catholic, as in its application of the term ‘ Sabbath’ to the first, instead of the seventh day, on which, and not on the Sunday, the Creator rested from His work.<sup>2</sup> For the observance of other holy days, it is enough to notice that the celebration of Easter-Day occasioned serious disputes, involving assertion of diverse Apostolic practice; and that the anniversaries of the Passions of the Martyrs engaged the Church’s attention from the first.

§ 2. Christ hath hallowed the days of Lent to fasting by Moses, by Elias, by Himself. They are *the tithe of the year*, when we should abstain from delicate Observ- viands, and live soberly. *ance of Lent.* They who by reason of infirmity cannot forego cheese and eggs and fish and wine are bound to use them with moderation.<sup>3</sup>

S. Gregory, when he allows fish and wine, forbids the furnishing of expensive fish-banquets, and generally that which gratifies the body.<sup>4</sup> The simplest rule of abstinence is the earliest, that of S. Hermas. “When thou fastest, content thyself with bread and vegetables and water, giving thanks to God; and, reckoning up the cost of the dinner thou wouldest have eaten that day, give it to him that needeth.”<sup>5</sup> Neither weddings nor birth-day feasts should take place in Lent.”<sup>6</sup>

<sup>1</sup> Decret. Greg. II. Tit. ix. c. 3.

<sup>2</sup> Bailey, bishop of Bangor, Author of that excellent Puritan manual ‘The Practice of Piety,’ was “sent to the Fleet (prison) for disputing malapertly with the King (James I.) on the Sabbath.” (Chamberlain’s Letters, July 14. 1621.)

<sup>3</sup> Theodulf. capp. 37, 40.

<sup>4</sup> I. Decret. Dist. iv. c. 6.

<sup>5</sup> Pastor, L. III. Similitudo V. c. 3.

<sup>6</sup> Council of Laodicea, canon 52.

CHAPTER VIII.  
OF THE CONSECRATION OF PLACES.

§ 1. A BISHOP should remember, that he consecrate not a church without first receiving a grant of endowment, confirmed by document. For that is no light fault, when a church is consecrated without Consecration of churches. a substantial support for those that are to serve therein.<sup>1</sup> No bishop should consecrate a church built from motives of interest rather than devotion; as, when the founder is to derive profit from the offerings.<sup>2</sup> This principle strikes at the root of Proprietary Chapels. Churches are not to be consecrated save under Saints' names.<sup>3</sup>

§ 2. Pope Vigilius II. maintains that the purpose of hallowing is *without all doubt* fulfilled by the celebration Consecration, how effected? of the Eucharist within a church.<sup>4</sup> This is confirmed by Gregory IX., saying, that “a church, in which the Divine Mysteries are celebrated, though it be not consecrated, enjoys immunity from profanation.”<sup>5</sup>

§ 3. There is no doubt but the presence of God's angels Reverence due to churches. is there, and He Himself full near. Therefore it is very dangerous to do or say anything in holy places which befits them not.<sup>6</sup>

§ 4. The Western Church appears to have been always more lax on this head than the Eastern. Balsamon remarks, “I understand about the Latins, that not only laymen, but even women, go and sit in the Sanctuary,

<sup>1</sup> Second Council of Braga, canon 5, A.D. 572. II. Decret. Caus. I. qu. 2. c. 1.

<sup>2</sup> Ibid. c. 6.

<sup>3</sup> Decretal. Papae Gel. sii, c. 10. Yet the churches of *the Divine Wisdom* (S. Sophia) and of *the Resurrection* (S. Anastasia) at Constantinople evince another practice.

<sup>4</sup> Labbei Concilia, Tom. V. p. 313.

<sup>5</sup> Decret. Greg. III. Tit. xlix. c. 9.

<sup>6</sup> Theodulf. cap. 10.

oftentimes even when the officiating clergy are standing.”

The Chancel or Sanctuary reserved for the officiating Clergy.

While laymen generally were forbidden to enter therein, “the orthodox Emperors,” he continues, “who promote Patriarchs by invocation of the Holy Trinity, and who are the Lord’s anointed, enter within the holy altar whenever they please without hindrance, and cense it and cross it with the triple taper, as the bishops do.”<sup>1</sup> The Second Couucil of Tours, A.D. 567, orders the space between the skreen and the altar to be open only to the choir; but for prayer and communion the Sanctuary should be free, as was customary, to lay men and women.<sup>2</sup>

§ 5. Meetings and conferences of laymen in churches are by rule forbidden; yet may they well assemble there

Of lay meetings in churches.

for spiritual purposes.<sup>3</sup> All repasts, even ‘the feasts of charity’ spoken of by S. Jude, are forbidden by the Council of Laodicea.<sup>4</sup> It

seems however that in Africa, (probably where caravanserais and hospices were wanting,) clergy were allowed to eat in the churches; but the people restrained *as far as possible*.<sup>5</sup> All noise, excitement, vain talk, and gossip, all that may disturb the Divine Service or offend God, should cease in the place where we ask forgiveness of sins. So too all meetings of societies, public speeches, business, and judicial proceedings.<sup>6</sup>

Churches may be fortified in case of need.

Reconciliati-  
on of  
churches.

§ 6. It is the common opinion of canonists, that churches may be fortified in time of need for the purpose of defence.<sup>7</sup>

§ 7. A church is not really polluted because of men’s offence; but the ceremony of reconciliation is performed in order to awe men into contrition for sin; seeing how, in consequence of an

<sup>1</sup> Bals. in *Concil. Trullan.* can. 69, ap. Beveregii Synodic. I. 239.

<sup>2</sup> Can. 4.

<sup>3</sup> Panorm. VI. f. 227.

<sup>4</sup> Can. 28.

<sup>5</sup> Third Council of Carthage, canon 30.

<sup>6</sup> Sext. Decret. III. Tit. xxiii. c. 2.

<sup>7</sup> Panorm. VI. f. 225.

atrocious deed, the building is in a manner polluted, so as to need reconciliation.<sup>1</sup>

§ 8. A church is re-consecrated, when the walls have been burnt down or otherwised ruined. Also, when the Re-consecration of churches. walls have been from time to time repaired, so that no portion of the original structure remains. The consecration was held to consist in the anointing made by the bishop with the sign of the cross on the surface of the wall inside the church.<sup>2</sup> I cannot discover what may be the precise theory of the modern Anglican Church, whether the consecration is effected by the special solemn prayers of the Bishop or by the publication of his sentence of consecration.<sup>3</sup>

§ 9. By the ancient canons, the third part of the oblations of a parish went to provide for lighting and Of the Repairs of England, repairing the church.<sup>4</sup> By the common custom of the churches. of England, the repairing of the nave of the church, where the parishioners sat, belonged to them; that of the chancel, to the Rector.<sup>5</sup> The last clause is of common law; because the Rector receives that *fourth* portion of tithes, which of old was assigned to the fabric of the church.<sup>6</sup> As early as A.D. 876, the sons of the Church were, *according to ancient custom*, to repair the parish churches.<sup>7</sup> A church, partially repaired, loses not its consecrated character.<sup>8</sup>

§ 10. Any one of the faithful may have an oratory in Of private Oratories. his house and pray there:<sup>9</sup> yet ought there to be no celebration of the Eucharist without license of the bishop.<sup>10</sup> That license should not be granted on the greater festivals. It appears that S. Ambrose

<sup>1</sup> Panorm. VI. f. 207. Founded on a Decretal of Innocent III. occasioned by the bloody frays of the pilgrims to the shrine of S. Jago of Compostella; III. Decret. Greg. Tit. xl. c. 4.

<sup>2</sup> Panorm. VI. f. 207.

<sup>3</sup> See above, § 2.

<sup>4</sup> III. Decret. Caus. x. qu. 3. c. 1.

<sup>5</sup> Johannes De Athona, p. 113.

<sup>6</sup> Lyndwood, p. 53.

<sup>7</sup> Council of Pont-sur Yonne, can. II.

<sup>8</sup> Gavanti, Manuale Episcoporum.

<sup>9</sup> III. Decret. Dist. i. c. 33.

<sup>10</sup> Panorm. VI. f. 206.

being at Rome A.D. 382, (out of his own diocese,) celebrated in a private house at the request of a noble lady.<sup>1</sup> And Theodore, a bishop too, celebrated in a hermit's cell, using his deacon's hands for an altar.

Thus it seems that a jealous regard for Unity was at the bottom of the prohibition; and it originally applied to bishops as well as priests.<sup>2</sup> In the Eastern Church a priest, presuming to celebrate or to baptize in oratories against the bishop's express prohibition, was liable to be deposed; but, says Zonaras, "he who has not been expressly prohibited seems to do so tacitly according to the bishop's mind."<sup>3</sup> Private oratories have not the immunity of churches, nor are they to be visited by bishops, nor is procuration to be exacted of them, nor ought they to have a belfry.<sup>4</sup>

## CHAPTER IX.

### OF THE CONSECRATION OF CIRCUMSTANCES OF WORSHIP.

§ 1. SET forms of prayer, "*composed by wise men*" and "*approved of in synod*," were used in early times; not only because prescript forms came into the Church from the Synagogue through the Apostles, of which traces exist in the writings of S. Paul, but also to guard the purity of the Faith.<sup>5</sup> Mark the words "*composed by wise men*," and those that follow, namely, "*and approved of in synod*." S. Gregory the Great, where he urges the propriety of reciting the Lord's Prayer at Consecration as being the traditional Use of the Apostles, contrasts the greater

The principle of  
Liturgical  
Forms.

<sup>1</sup> Fleury, Hist. Ecclés. L. xviii. c. 19.

<sup>2</sup> Council of Laodicea, can. 58.

<sup>3</sup> In commentario sup. Concil. Trullan. can. 31, *ap.* Beveregii Synodic I. p. 191.

<sup>4</sup> Petrus De Ancharano, *sup.* Sext. Decr. Tit. vii. c. 4.

<sup>5</sup> See African Council, can. 103, A.D. 407.

authority of such use with the Canon of the Mass, itself the composition of *some scholar*, he observes.

If, then, Liturgical Forms rest on the approval of a Synod, they may be changed by like authority; provided the consent and harmony of the Catholic Church be not thereby violated. I attach this Proviso advisedly, although our Church contents herself in Article xxxiv. with the bare assertion of her right as a National Church. But ‘National Churches’ should be tied to the consent of the Church Universal. For it is clear there never could be Catholic Unity, if any portion of the Church were suffered to set aside the tradition of the residue in matters of prime importance. The best Divines of the English Church never denied that there were “things wanting” in it, the restoration of which they, like Bishop Andrewes, made a subject of prayer. In one instance, namely, the form expressing Oblation of the *res Sacrae* and the Invocation of the Holy Ghost to effect the mystery of Consecration, such prayer has been crowned with success in the American Church.

Other points, such as the Mixture of the Chalice, the clear recognition of Communion with “the spirits of just men made perfect,”<sup>1</sup> the reverent memorial of the Virgin Mother of Jesus and of His Apostles in the Canon, and the intercession for the Dead, are so important and so universal, that the omission of them demands on our part an act of reparation to the rest of Catholic Christendom.

§ 2. The forms and ceremonies attending the celebration of Divine Service arose from the necessity of maintaining the design in ourselves and of conveying to others the reverence which that service requireth.<sup>2</sup> Even in Apostolic times, it may be inferred from Scripture that a considerable amount of *Ritual*, as the said forms and ceremonies are termed, obtained among Christians. Not to dwell on Imposition of Hands in ordaining elders or

<sup>1</sup> Hebrews XII. 23.

<sup>2</sup> Thorndike, The Service of God in religious assemblies, ch. ix. § 14.

priests and in confirming,<sup>1</sup> there are rites implied in the metaphorical language of the Apostles. Metaphors are unintelligible to those who are unfamiliar with the objects, which such words are meant to convey to the mind of the hearer. Thus, when S. Paul speaks of *putting off* the old man<sup>2</sup> and *putting on* the new, the fitness of the figure is clear, when we see in it the allusion to the wearing of white robes by the newly baptized. When he speaks of being *buried in baptism*,<sup>3</sup> we cannot fail to perceive a figure drawn from the practice of Immersion. When S. John saith, "Ye have *an unction* from above,"<sup>4</sup> he writes to men familiar with the rite of Anointing in Confirmation. Some have thought, that, when S. Paul bade Timothy bring him his 'cloak' and 'parchments' from Troas,<sup>5</sup> he took order concerning his liturgical vesture and service-book, not merely his winter-wrap; especially as the word *phailone*, which he uses, is still the term employed by the Greeks to designate the priest's vestment at Mass. If we seek why Ritual should increase and become more solemn after the world was come into the Church, it may be alleged that owing to the influx of cold and indifferent converts it was more requisite that all should pass in the most reverent form.<sup>6</sup>

§ 3. The purpose of the Ritual that attends the Eucharist proceeds from belief in the Real Presence, that is, that our Lord Christ is mysteriously, yet truly, *represented* or rendered present in and at that holy Sacrament. Some points of Ritual must be noticed. Thus, the Third Council of Carthage orders the Oblation of bread and wine mixed with water.<sup>7</sup> The *mixture*, mentioned by Justin Martyr in the early years of the second century, was simply a retention of the Jewish custom which our Lord must have complied with, as He innovated not on the ritual of the Synagogue. Its

<sup>1</sup> I Tim. iv. 14. Acts viii. 17.

<sup>2</sup> Coloss. iii. 9, 10.

<sup>3</sup> Romans vi. 4.

<sup>4</sup> I John ii. 20.

<sup>5</sup> II Tim. iv. 13.

<sup>6</sup> Thorndike, ch. ix. §§ 4, 5.

<sup>7</sup> Canon 24.

rejection by the Armenians came from an heretical design to favour their notion of the absorption of the Human into the Divine Nature in Christ. The English Reformers omitted it, probably from a nice regard to the bare letter of the Gospels.

LIGHTS, that is, lamps or wax-tapers, were used from the beginning. Some have thought S. Luke refers to the custom in Acts c. xx. v. 8. It was justified by the precedent of the golden candlestick in the temple, and the vision of the Son of Man in the midst of the seven candlesticks.<sup>1</sup> We learn from Herodian that the carrying of fire before them was an ensign of Royal personages. The said vision of the Lord in “a garment down to the foot and girt with a golden girdle” possibly led to the adoption of VESTMENTS at the Eucharist. The association of INCENSE and perfume with festal occasions, and its employment in the Temple-worship, made its use appear natural and becoming.

§ 4. Christ instituted the Eucharist on the first day of unleavened bread, when no leaven was found in the houses

Of the Use of unleavened Bread. of the Jews ; so it is presumed that He employed unleavened bread. The use of it agrees better with reverence in respect of the Sacrament ; for

leavened bread can scarcely be broken but some crumb falls. Also, S. Paul’s words make to the same purpose ; “*Not with the old leaven*, but with the UNLEAVENED BREAD of sincerity and truth.” Still it is not denied but that Consecration is valid, when the Sacrament is celebrated with leavened bread and unmixed wine ; though the significancy is impaired.<sup>2</sup> Cardinal Bona admits that the use of unleavened bread has not always existed even in the Western Church.<sup>3</sup> The wafers used in the Anglican Church under the First Liturgy of Edward VI. were, we are told by Messer Barbaro the Venetian Ambassador in

<sup>1</sup> Rev. I. 13.

<sup>2</sup> Panorm. VI. f. 213. Decret. Greg. III. Tit. xli. c. 14.

<sup>3</sup> De Rebus Liturgicis, p. 444. ed. Antwerp. 1677.

1551, "coarser than what is used at Venice, and of circular form without images."<sup>1</sup> In 1614, the House of Commons, would not receive the Communion at Westminster Abbey, "for feare of copes and *wafer-cakes*."<sup>2</sup>

§ 5. The Chalice should not be of wood, for it absorbs wine; nor of glass, for fear of breaking; nor of copper or Of the brass, because of rust. But it should be of gold Chalice. or silver; and, in case of poverty, may be of pewter.<sup>3</sup> S. Boniface of Mayence being asked, If it were allowed to consecrate in wooden vessels? replied; "Formerly golden priests used wooden chalices; now, on the contrary, wooden priests use golden chalices."<sup>4</sup> The Cup was withheld from the laity as late as 1281. For the Council of Lambeth remarks that "in the lesser churches the celebrant alone took the Precious Blood." And in 1287 that of Exeter implies that the laity still received the Chalice.<sup>5</sup>

§ 6. Cardinal Humbert, in his reply to the Greeks, avows that the Church had appointed Mass to be said at Minor points of Ritual. the third hour on Sundays and holy days, because of the descent of the Holy Ghost at that hour.<sup>6</sup>

The Synod of Worcester, canon 12, A.D. 1241, forbade a priest to celebrate without previously saying Prime, in a word, morning prayer. So also Archbishop Reynold in 1322. Priests must not lean on the Lord's Board. It is told of the Patriarch Tarasius A.D. 806, that he failed not to celebrate in his old age, which he did leaning on a wooden table set before the altar, not on cushions resting on the holy Table.

Pope Zachary ordains that (save in case of a seizure) the celebrant who begins, must also go on with, the Service of the Eucharist.<sup>7</sup> No one is to communicate without receiving separately the Body and the Blood, unless of

<sup>1</sup> Calendar of State Papers, Venetian Series.

<sup>2</sup> John Chamberlain's Letters, April 14. 1614.

<sup>3</sup> Panorm. VI. f. 213. Decret. De Consecr. Dist. i. c. 45.

<sup>4</sup> Ibid. c. 44.

<sup>5</sup> Canon 4.

<sup>6</sup> Fleury, Hist. Ecclés. I. lx. c. 7.

<sup>7</sup> III. Decr. Dist. i. c. 57.

necessity and with precaution.<sup>1</sup> This is meant to cover the mode in which the Eucharist was occasionally ministered to the dying.

While up to the Mass of the catechumens the church was open to Gentile, Jew, or heretic “to hear the Word of God,” *the faithful were not to depart till the end of Mass* and the blessing of the priest.<sup>2</sup>

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## CHAPTER X.

### OF EXCESS OF CEREMONIES.

§ 1. It was Augustine’s judgment, that “where the opportunity was afforded, the excessive ceremonies of the

*Excess of Ritual con-demned.* Church were without any hesitation to be re-trenched (*resecanda.*)” Though he professes not that they were against the Faith; yet, he

says, “they crush with servile burthens the Religion which God willed should be free, having few and clear sacramental rites. Insomuch that the condition of the Jews is more tolerable; who, though they acknowledge not the time of liberty, are yet subject to sacraments of the Law, not to human presumptions.” But he takes care to except from his rule “whatever things are contained in Holy Scripture or established by the custom of the universal Church.”<sup>3</sup>

§ 2. Balsamon thought “they do ill who let off doves in church, to answer to the descent of the Holy Spirit;

*Also, Panto-mimic shows.* light a taper to betoken the wondrous star; and dress up the Birth of Christ in the cave by means of a child and cradle, describing by human

<sup>1</sup> Council of Clermont, canon 28. A.D. 1095.

<sup>2</sup> Fourth Council of Carthage, can. 84. Council of Agde, can. 47.

<sup>3</sup> S. Aug. ad inquisitiones Januarii epist. 55, c. 19. I. Decret. Dist. xii, c. 12.

inventions what exceeds our conception.”<sup>1</sup> Some would at the present day fain introduce mummeries which offended a mediæval Greek Patriarch. The Council of Basel (Session xxi.) condemns shows or acted representations such as that of the boy-bishop on S. Nicholas’ day. But Puritans took umbrage at the modest ceremonies of White Hall Chapel-Royal. “They do so overdo them” is Pepys’s remark.<sup>2</sup>

§ 3. “We have learnt,” writes Pope Caelestine I., “that certain priests minister to superstitious worship rather than to purity of faith”; and then goes on to point to the source of such corruptions, saying, “But no wonder that they act against custom, who were not brought up in the Church, but coming another way have introduced into it *alien fashions*. The ignorant should be instructed, not trifled with. Nor should we *impose on their eyes*, but instil precepts into their minds.”<sup>3</sup> What that ‘other way’ was, whereby the corrupters of the Church crept in, is clear from the second canon of the Nicene Council; which tells us that “men recently coming over to the Faith from *heathen life*, and instructed *in a short time*, as soon as they are baptized, proceed to be bishops and priests.” What were those ‘alien fashions,’ ‘introduced into the Church,’ ‘from heathen life,’ we may gather from a Christian Father and a philosophic heathen. S. Irenaeus in the second century notices, how the Gnostics *crowned pictures and statues* of Christ, and “did other observance concerning them, even as the *Gentiles do*.”<sup>4</sup> Ammianus, relating how the temple of Daphne in Syria was burnt down A.D. 362, tells us the fire was occasioned by Asklepiades the philosopher leaving a small silver image of the Goddess of Heaven, which he was wont to carry about with him, at the feet of Apollo, and

<sup>1</sup> Bals. *apud* Beveregii Synodic. I. 252.

<sup>2</sup> Diary, July 29, 1660.

<sup>3</sup> Labbei Concilia, II. f. 1619

<sup>4</sup> Adversus Haereses, L. I. cap. 24.

*lighting wax-tapers*, as was customary. On his retiring, all went a-blaze at midnight.<sup>1</sup> The bright medallion of Catholicism has an obverse side.

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## CHAPTER XI.

### OF THE DIVINE SERVICE OF COMMON PRAYER AND PRAISE.

§ 1. THE hearing of Matins and Evensong, as well as Mass, on Sundays and holy days is marked as incumbent on parishioners by Riculf bishop of Soissons in the ninth century.<sup>2</sup>

Matins and Evensong. Service to be sung in Cathedrals, &c. § 2. Divine Service is to be daily *sung* at the proper hours in cathedral and collegiate churches; in others not collegiate it need not be chaunted, but is to be duly *said*.<sup>3</sup>

§ 3. The Church hath never formally enjoined the use of musical instruments in Divine Service, but has adopted it with the tacit approval of all. In the earliest times music could not safely be employed in Christian assemblies, which were held in private for fear of the heathen. And perhaps it was felt that the use of it was too clearly sanctioned in the Old Testament to need legislation.<sup>4</sup> Pope John XXII., while condemning ‘the disciples of the new School,’ who with their “semi-breves, minims, their tripping descants, triplets, and vulgar motetts, do not know the tunes which they confound, inebriate the ear, and give an impulse to wantonness,” still allows of some rhyming melodies, so long as the simple Ecclesiastical Chaunt remains unimpaired.<sup>5</sup>

<sup>1</sup> Ammiani Marcellini Hist. l. xxii. c. 13.

<sup>2</sup> Mabillon, De Cursu Gallicano, pp. 415–418. *ed.* Paris, 1685.

<sup>3</sup> Panorm. VII. f. 315. Founded on Clementin. III. Tit. xiv. c. 1.

<sup>4</sup> See S. Thom. Aquin. Secunda 2<sup>ae</sup>. Qu. 91. Art. 2.

<sup>5</sup> Extravagantes Communes, III. Tit. i.

The Council of Basil, Session xxi. forbids singing profane airs in church.<sup>1</sup>

§ 4. In the time of Isidore of Seville it was complained, that certain readers “pronounce so wretchedly as to drive Of clerical some persons to cry. Their voice should be Reading. clear enough to fill the ears of people at a distance.”<sup>2</sup> Herein the remedy is not so easy as the warning. Archbishop Cuthbert A.D. 747, orders priests “not to dislocate sacred words by pronouncing *like tragedians*, but follow the Plain Song of the Church. Let him who cannot chaunt simply read the words.”

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## CHAPTER XII.

### OF PRAYERS IN THE VULGAR TONGUE.

§ 1. POPE John VIII. wrote, that “it is no hindrance to faith or doctrine, either to sing Masses and other offices in the *Sclavonic* tongue, or to read lessons, well translated and interpreted, of the Old or New Testament; for He, who made the three chief languages, Hebrew, Greek, and Latin, Himself also created all others to His praise and glory.”

Contrariwise Gregory VII. denied the Bohemians the use of Divine Offices in the vulgar tongue, on the plea of the obscurity of the Holy Scriptures and the chance of breeding contempt in the ignorant. After making due allowance in Gregory’s favour, that the Romance dialects, the Italian, Provençal, old French, were only in process of formation, being the *debris* of the Latin, while the Sclavonic contemplated by John VIII. was a virgin

<sup>1</sup> Bad taste is not heresy, but it debases Religion. I have heard the Olga Mazurka employed as Mass-music in an Italian church, have felt the incongruity of certain ‘tripping’ Anglican chaunts, and have been wounded by the ‘vulgar’ lifts of Sankey and Moody.

<sup>2</sup> I. Decret. Dist. xxi. c. 1.

tongue, lively and vigorous, I still think his course was a taking away the key of knowledge, not *teaching the use of it*.

Fleury remarks, "That blind respect agrees but with false religions, founded on fables and frivolous superstitions."<sup>1</sup>

§ 2. It may also be urged, that, if we compare S. Paul's language in I. Tim. ii. 1, coupling *Eucharistias* or 'thanksgivings' with *enteureis* or 'intercessions,' that is, Of the Liturgy in the vulgar tongue. Litanies; and that in I. Cor. XIV. 16, "How shall he that occupieth the place of the unlearned say Amen at thy giving of thanks?" he is probably in both places speaking of the Eucharist, seeing that he points at the order observed in the Greek Liturgies. And consequently this may prove a fresh argument for the position of the English Church in rendering that service in the vulgar tongue.

### CHAPTER XIII.

#### OF HOSPITALS AND RELIGIOUS HOUSES.

IN the primitive Church, as soon as Christians were in free and legal exercise of their religion, not only monasteries for men and women, but also other foundations for carrying out works of mercy, abounded; such as nurseries for infants, orphanages, infirmaries, homes for the aged, hospices for strangers. Such places belonged to the Bishop's charge and oversight; and being religious houses destined to the use of the poor were, by ancient custom, not to be applied to secular purposes.<sup>2</sup>

The subject of Monastic Institutions, which so largely occupies the Canon Law, scarcely finds room in a work which is planned to suit the circumstances of the English Church. For, although Monachism in a modified form, as

<sup>1</sup> See Van Espen, I. 367.

<sup>2</sup> Decret. Greg. III. Tit. xxxvi. c. 4.

regards women, has been restored with some amount of countenance from the Episcopate; yet it has not attained such proportions or public sanction from the Church as to be dealt with as part of our general system. When Anglican divines have advocated monachism, as Jackson and Thorndike have done, the latter saying, “It is certainly a blot in the reformation which we profess, that we are without it;”<sup>1</sup> they have clogged their admissions in its favour with demands that appear incongruous with its nature and with the circumstances of the Reformed Church. For, when they and, I think, invariably the Rulers of that Church deprecate or disallow the taking of perpetual vows by *religious* persons on the ground of its being a snare for the soul, I see not how those solemn pledges which they exact from the Clergy at the unripe age of three or four and twenty years, can be justified; to say nothing of requiring ‘unfeigned assent and consent’ to so many intricate propositions contained in the Articles, which the young ministers cannot be qualified to ripely weigh or examine. But even if they could produce stronger reasons, I submit that the example of *the whole Church* ought to conclude and rule the objections of a minority.

Again, when they demand that religious societies, professing retirement from the world, should be subject for “direction and correction to the bishop of the diocese” with his clergy;<sup>2</sup> they forget that bishops and clergy, who *as married men* are so mixed up with the world, and share the comforts and refinements of a highly artificial state of society, are hardly qualified, as were the *continent* bishops of the primitive Church, to regulate the sublime yet perilous course of the Ascetic Life.

It appears from a letter of S. Epiphanius to John of Jerusalem, that monasteries were regarded as ‘peculiars,’ and exempt from the jurisdiction of the diocesan, as it would seem, because they often consisted of foreigners.<sup>3</sup>

<sup>1</sup> Works, Vol. v. p. 571.

<sup>2</sup> Ibid. p. 573.

<sup>3</sup> S. Hieron. Opp. Tom. I. f. 208.

The Third Council of Arles A.D. 455 ordained that lay monks belonged to the sole disposal of their own elected Abbat.<sup>1</sup>

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## CHAPTER XIV.

### OF BURIAL.

§ 1. THE dead are not to be buried with much grief and wailing, but with psalmody and song ; lest men seem to fail in the hope of another life : seeing much Of Burial mourning is a sign of despair.<sup>2</sup> Christians are generally buried looking eastward ; which manner was observed in the burial of Christ.<sup>3</sup>

§ 2. Although of ancient right a man should be buried with his ancestors, yet now every one is free to chuse his Of the Law of Burial. own burial-place. Properly it should be where he receives religious ministrations.

A father may by custom chuse where to bury his children dying under age. A woman, married to successive husbands, unless she chuses for herself, is to be buried with the last husband whose home she shared.<sup>4</sup>

§ 3. S. Ambrose had intended to have been buried under the altar, saying, "For it is right that the priest Burial of Priests. should rest where he was wont to offer" the Eucharist.<sup>5</sup> But he gave way to SS. Gervasius and Protasius. It is an ancient custom to bury priests with their sacerdotal vestments.<sup>6</sup>

§ 4. A layman has no right of burial in a church or cemetery, in respect of *property* ; for consecrated places Right of burial in churches. cannot be at the absolute disposal of any person. But, as regards *use*, he may have such right

<sup>1</sup> Sirmond. *Concilia Galliae*, T. I. p. 121. *ed. Paris.* 1629.

<sup>2</sup> Panorm. VI. f. 133.

<sup>3</sup> Bede asserts it from Adamnan of Iona. (Mabillon, *Iter Italicum*, p. 141.)

<sup>4</sup> Sext. *Decret.* III. Tit. xii. c. 3.

<sup>6</sup> Hostiensis, I. f. 85.

<sup>5</sup> Epist. xxii.

for himself and family; nor may any stranger be buried there against their will.<sup>1</sup>

§ 5. A person executed for crime, provided he has repented, may be buried in the cemetery of a church with Burial of the solemnity of Mass and of other offices; nor criminals. are the holy rites of the Church to be denied to such an one. For if capital punishment expiates his offence, it avails that he be not punished twice for the same.<sup>2</sup> If the Communion be given at their end to all penitents, why not to those who pay the extreme penalty for their sins?<sup>3</sup>

§ 6. A parish priest ought to give the Sacraments and other spiritualities to his parishioners gratis. A custom Principle of giving may be introduced from the mere Burial liberality and devotion of the people.<sup>4</sup> Panorman holds that the laity may be lawfully compelled to observe the customary payment of fees.<sup>5</sup> But the Third General Council of Lateran says expressly with reference to all fees for Church offices, that to allege long-standing custom only renders the abuse more criminal.<sup>6</sup> And that of Tours, A.D. 1163, forbids the exaction of fees.<sup>7</sup> The practice of demanding fees for opening graves was branded as ‘perverse’ and forbidden by Innocent III.<sup>8</sup> Also by the Council of Metz, A.D. 888.<sup>9</sup>

<sup>1</sup> Panorm. VI. f. 139. He adds, “The same may be said as to seats or benches, which laymen claim in many churches: nevertheless, laymen cannot acquire such a right in a church without the Bishop’s leave, but are only tolerated in the same by favour.” See also Petr. De Ancharano *sup. Decr. Greg. III. Tit. xxviii. f. 123*; who testifies to the practice as existing at Venice.

<sup>2</sup> Panorm. VI. f. 138.

<sup>3</sup> Council of Mayence, can. 27. A.D. 847.

<sup>4</sup> Panorm. VII. f. 100. Decret. Greg. V. Tit. iii. c. 29. <sup>5</sup> VI. f. 139.

<sup>6</sup> Canon 4.

<sup>7</sup> Canon 6.

<sup>8</sup> III. Decret. Greg. Tit. xxviii. c. 13.

<sup>9</sup> Canon 4.

## CHAPTER XV.

## OF TITHES.

The Principle of Tithes. § 1. TITHES, not only of the produce of the earth, but also of all lawful gains are to be given to God in token of His universal dominion ; He hath commanded them to be paid to the clergy for the performance of Divine Service.<sup>1</sup>

Tithes, whether of Divine right ? § 2. Such was the doctrine of the old canonists. Nearly all the moderns, with S. Thomas Aquinas, teach, in opposition to them, that though tithes in a certain proportion, namely, a tenth part of all goods justly acquired, were due under the Old Testament by a positive law of God ; in the New, however, they are binding simply by Church law. No text can be shown throughout the New Testament to prove the obligation of paying tithes.<sup>2</sup> Böhmer argues acutely from the strong Protestant point of view, that the cases of Abraham (Genesis xiv. 18), and Jacob (Ibid. xxviii. 22), do not prove the divine obligation of tithes, because they gave tithes freely or in consequence of a vow. But whence derived they the notion, save from a tradition resting on Revelation or on Natural Law ? The tithes granted to the Levites were in lieu of their share of the land of Canaan. The payment of tithes, as the mode whereby Christians should fulfil what is really of Divine command, namely, that they who preach the Gospel should live of the Gospel, was only gradually introduced. It was aided by the analogy, insisted on by the Fathers, between the clergy and the Levitical priesthood. S. Cyprian points to an analogy, not to a strict obligation of the Mosaic Law of tithes in the letter. He terms it a "reason and

<sup>1</sup> Panorm. VI. f. 150. Decret. Greg. III. Tit. xxx. c. 26. Council of Peña-fiel, can. 7. A.D. 1302.

<sup>2</sup> Reiffenstuel, III. 563. He refers to Van Espen, Layman, Covarruvias, Gutierrez ; but himself follows the old authorities.

form held among the clergy, that they be in no case called away from their ministration, nor be tied to secular engagements; but that, sharing the honour of the brethren that receive support from the Church, ("sportulantum fratrum,") getting *as it were* tithes of produce,<sup>1</sup> they may not quit the Altar, but mind spiritual things day and night."<sup>2</sup> Thorndike very ably shews, that from the earliest constitution of the Church at Jerusalem, when it was truly the realization of an *Ideal Church*, for that "great grace was upon them all,"<sup>3</sup> ample provision was made for the Apostles themselves and all who continued daily in their fellowship, as well in the temple, as in the breaking of the Eucharistic Bread in private;<sup>4</sup> for one consequence of the 'great grace' was that "all sold their possessions and goods" for the common benefit, yet so as that, when aught was sold, the price was in their own power,<sup>5</sup> and was offered a free-will offering.<sup>6</sup>

§ 3. The burthen of tithes is annexed to land: whence, although it pass by transfer to persons not directly bound to pay tithes, such as Jews, yet ought they to be compelled to do so, as an incident of their tenure.<sup>7</sup>

§ 4. Assuming tithes to be of divine right, "yet may men compound, that they be paid in less quantity, or in a certain manner."<sup>8</sup> If the composition be for a season, it may be done by authority of the Bishop; if perpetual, "not without the Pope's authority," says Panormitan.

§ 5. All tithes and *oblations*, which come from the parish, go to the parish-church;

<sup>1</sup> "Tamquam decimas ex fructibus accipientes."

<sup>2</sup> Epist. I. Böhmer. *Jus Ecclesiastic. Protestantium*, III. 92-95.

<sup>3</sup> Acts iv. 33.

<sup>4</sup> *Ibid.* ii. 42, 46.

<sup>5</sup> Ib. v. 4.

<sup>6</sup> *Principles of Christian Truth*, Bk I. § 25.

<sup>7</sup> Panorm. VI. f. 147. He goes the length of stating, that if we hold personal tithes to be of divine right, Jews may be compelled to pay them also. *If they did not hear divine service, that was their fault! Similarly in the case of schismatical Christians.*

<sup>8</sup> Tom. II. ff. 134, 135.

whence is inferred, that, if within a certain parish  
 Tithes and Church dues go to the Parish-church.<sup>1</sup> The principle turns on the point, which church has  
 the right of possessing a baptismal font.<sup>2</sup> By ‘oblations’ is signified whatsoever is offered to the Church anywise at Mass or not, in church or not.<sup>3</sup> Though the theory of tithes be now wrecked, it is useful to mark the objects which it embraced, and which are now so painfully compassed by varying expedients of Rates and Offertories. “Let the priest,” says the Council of Metz, A.D. 888, “who serves the church which originally received the tithes, receive them in their integrity for his own support, for the repairs of the church, and for obtaining lights, vestments, and other things pertaining to his ministry.”<sup>4</sup>

## CHAPTER XVI.

### OF ALIENATIONS.

§ 1. THE act of an incumbent ought not to occasion loss to his church, nor his offence redound to its detriment.<sup>5</sup>

Limita-  
 tions of  
 the same. Therefore, priests not in want should not sell the property of the church they serve, without the knowledge of their bishop.<sup>6</sup> If, during the vacancy of a see, the priests have sold some church property, it is for the new bishop to judge whether it be to his advantage to accept the purchase-money or reclaim the property.<sup>7</sup> While a bishop or his priests should not embezzle the property of the church to the detriment of Religion, the interest of the church should not be a pretence for robbing the bishop’s private means, so as to

<sup>1</sup> Panorm. VI. f. 69.

<sup>2</sup> II. Decret. Caus. xvi. qu. 1. c. 45.

<sup>3</sup> Decret. Greg. V. Tit. xl. c. 29.

<sup>4</sup> Canon 2.

<sup>5</sup> I. Decret. Greg. Tit. xlivi. c. 3.

<sup>6</sup> Council of Mayence, canon 8. A.D. 847.

Council of Ancyra, can. 15.

embarrass his relations, and render his memory odious.<sup>1</sup> They who, possessing nothing at their ordination, acquire estates in their own name shall be counted usurpers of sacred property, if they bestow them not on the Church. But they may dispose of what accrues to them by gift or by succession.<sup>2</sup> A bishop shall use the property of his church, as a trustee, not as a proprietor.<sup>3</sup> “It is indecent,” saith the Theodosian Code, “for bishops to spend the means of the Church on their own children or relatives.”<sup>4</sup> To that end it suggests the selection of those who had no families to be priests or bishops. The authorizing of the clergy to marry must needs infer a right to provide for wives and children, which the Church alloweth, out of Church-goods. But it can by no means abrogate the ancient rule forbidding Alienations to the extent of an allowance to convert the goods of the Church to raise them estates, nor so as to extinguish the interest of the poor in the said property. “For it is utterly a mistake to think that Church-goods were provided to the end, that the Clergy might equal the port of their parallel ranks in the laity in expense.”<sup>5</sup>

§ 2. A bishop, with consent of his chapter, may grant to an inferior dignity rights belonging to his own. A

Solemn concession once thus made cannot be revoked by his successor.<sup>6</sup> But a successor in a dignity bind successors. is not bound to stand by a contract not legitimately made by his predecessor.<sup>7</sup> When a grant is limited, it sometimes expires on the death of the grantor; when it is absolute, it is deemed perpetual, and is not extinguished by his death, even though the reason thereof may have ceased.<sup>8</sup> The eighth General Council as well as Pope S. Gregory forbid the selling off of sacred

<sup>1</sup> Council of Antioch, canons 24, 25.

<sup>2</sup> Third Council of Carthage, can. 49. A.D. 397.

<sup>3</sup> Fourth Council of Carthage, can. 32. <sup>4</sup> De Episcopis et Clericis.

<sup>5</sup> Thorndike, Just Weights &c. ch. xxiv. § 3. <sup>6</sup> Panorm. VI. f. 53.

<sup>7</sup> Petrus De Ancharano, *sup.* Decretal. I. III. Tit. xiii. f. 51.

<sup>8</sup> Idem *sup.* Sext. Decretal. Tit. iii. c. 5.

vessels or other church property, save for the redemption of captives ; to which S. Ambrose adds two more exceptions, namely, the building of churches and the enlarging of burial-grounds.<sup>1</sup>

§ 3. On this subject of Alienation, I must briefly advert to the recent Act of the British Legislature, whereby it

Aliena- has ‘alienated,’ that is, bestowed rights of com-  
tion, a mon property in the parish-churchyards on  
fruit of members of communions other than that of the  
National English Church. I do not see on what ground  
ism.

in reason, that will not equally apply to the remaining property of the Church ; namely, that they, as well as Churchmen, are representatives of common ancestors who bestowed the endowments. In other words, the principle that the majority binds the minority fails herein ; and a persistent minority at last successfully asserts its claim to have its own way. It is, in fact, a fresh example of the unhappy consequences attending the purely *National* phase of the Church’s life ; when, divorced from the fellowship of foreign Churches, (through the mutual fault of all,) she fails to fulfil the intentions of those who endowed her, (who lived under the Canon Law,) and is now fain to deplore the sacrilege of her own rebellious children.

Let me however do Parliament justice, and point out how Bishops taught it the lesson of spoliation, when they provided by Statute retiring pensions for themselves out of the revenues of their sees, in plain words, *alienated* them to that extent ; thereby proclaiming to the world, that (in their judgment, at least,) the spiritual efficiency of their successors suffered not by the abstraction of a portion of their incomes.

<sup>1</sup> II. Decret. Caus. xii. qu. 2. capp. 13, 14, 70.

## CHAPTER XVII.

## OF SIMONY.

§ 1. SIMONY is the bartering of something spiritual or what is annexed to it for temporal profit or advantage to the donor, and derives its name from Simon the sorcerer, who thought to purchase with money the gifts of the Holy Ghost. They who do so are, as the Patriarch Tarasius pointedly observes, less tolerable than the Macedonians. For, while these make Him, as they think, the creature and servant of the Father, they make the Spirit their own servant. By the Fourth General Council a bishop who ordains for money, or who appoints a treasurer or other church officer dealing with the temporalities, from motives of private interest, is in jeopardy of deposition.<sup>1</sup> By the Canon Law, the *exaction* of money for the installation of Prelates, for the institution of priests, for burying or marrying, is simoniacial; as also is the concealment of sins pertaining to the Bishop's cognizance (from motives of interest or affection,) and the tampering with the absolution of penitents (from favour or spleen).<sup>2</sup>

§ 2. If a strange priest be perchance invited to perform spiritual functions, he may lawfully receive payment in compensation for his being in attendance to minister spiritual things.<sup>3</sup> He doth not commit simony, in that he intends simply to gain his living.<sup>4</sup>

<sup>1</sup> II. Decret. Caus. i. qu. 1. capp. 8, 21.

<sup>2</sup> Decret. Greg. V. Tit. iii. cc. 9, 14.

<sup>3</sup> Panorm. VII. f. 100.

<sup>4</sup> Ibid. VI. f. 28. Inferred from a Decretal of Innocent III. Decret. Greg. III. Tit. v. c. 16.

## CHAPTER XVIII.

## OF HERESY AND SCHISM.

What constitutes Heresy and Schism?

§ 1. By ‘Heresy’ the ancients understood separation from the Church on an article of the Faith;<sup>1</sup> by ‘Schism,’ separation on a point of discipline;<sup>2</sup> while ‘a Conventicle’ or ‘illicit Meeting’ was one held by an irregular priest not convicted of error in doctrine.<sup>3</sup> “Only a false persuasion in matters necessary to salvation is enough to make an *heretic*.<sup>4</sup> “Not the opinion, but the destroying of a true, or erecting of a false, power in the Church, makes *schism*.<sup>5</sup> “When a schism is inveterate, it becomes *heresy*.<sup>6</sup> A clerk or literate person, erring on points of the Faith, is not a heretic, if he doth not pertinaciously defend his error; especially if he believes that the Church holds so.<sup>7</sup> In the case of Christians falling short of the Catholic standard from rusticity or ignorance, they are *our brethren*; it is much, if they preserve sound doctrine on the Trinity and Incarnation.<sup>8</sup>

Relations of the Church with heretics, &c.

§ 2. No one should communicate with them that fall into heresy, before the sentence of a Council.<sup>9</sup> He who betakes himself to the society of heretics to receive sacraments from them, or who contemning the orthodox desires to be ordained by heretics, cannot perform his function, even if afterwards he renounces heresy and returns to the Church.<sup>10</sup> The Faithful are not allowed to go to the churches of heretics to pray, under pain of excommunication and penance.<sup>11</sup> If a man quitted the Catholic church to

<sup>1</sup> Thorndike.

<sup>2</sup> Id. S. Augustine.

<sup>3</sup> S. Basil.

<sup>4</sup> Thorndike, Right of the Church, ch. v. § 36.

<sup>5</sup> Ibid.

<sup>6</sup> S. Augustin. Contra Cresconium, l. ii. c. 7.

<sup>7</sup> Panorm. I. f. 11.

<sup>8</sup> Peter, Patriarch of Antioch, Reply to Cerularius, A.D. 1054.

<sup>9</sup> I. Decret. Dist. L. c. 35.

<sup>10</sup> Ibid. II. Caus. i. qu. 7, ad cap. 4.

<sup>11</sup> Council of Laodicea, can. 9.

embrace heresy, and then returned, ancient discipline excluded him from communion for ten years.<sup>1</sup> Heretics, returning to Catholic unity, are received in the East with chrism, in the West by imposition of hands, or, in case of a very moderate form of error, by a sincere profession of faith only.<sup>2</sup> Recently, two millions of *Uniats* were received into the Russian Communion by merely reciting the Creed after the Greek form, and acknowledging Jesus Christ as Head of the Church.<sup>3</sup>

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## CHAPTER XIX.

### OF PENAL LAWS AFFECTING HERETICS.

§ 1. No man can be constrained by capital punishment to become a Christian, because no title of human right can enable any man to impose upon another that which human reason reveals not. The truth of Christianity being then beyond common reason to them. to discover, and resting on Faith in the Supernatural, it follows as a consequence that no heretic or even apostate can be punishable by death, *merely for the opinion that he professes*; for he sins against Faith, not against the mere light of Nature. And, further, as the common law of nations enjoins not Christianity as the condition of civil societies, (for they subsisted before Christianity;) it follows, that the sovereign Powers of civil societies are not bound to make Christianity the condition of citizenship in the states which they govern.<sup>4</sup>

§ 2. Thus Thorndike. Hereupon he pleads, on the ground of *disturbance ensuing to the public peace* by what the Civil Power may judge “is not true Christianity,”

<sup>1</sup> Council of Elvira, can. 22.

<sup>2</sup> III. Decret. De Consecratione, Dist. iv. c. 44.

<sup>3</sup> Notes of Visit to the Russian Church, p. 120.

<sup>4</sup> Thorndike, Right of the Church &c. ch. v. §§ 15 6, 15, 17

that it may check the same "by all penalties under" banishment and death. And if it is urged that The argument forced conformity only breeds hypocrites, he in their favour. replies that the objection argues, not the injustice, but the impolicy, of such penalties. How different the tone of Pope Julius I.! Upbraiding the Arians, he says; "The judgments of the Church are no longer according to the Gospel, but now they proceed to banishment and death."<sup>1</sup> I fear Thorndike's object was to defend the penal laws against Papists and Separatists in England, while condemning the extreme measures which have branded the memory of Mary the First. Nor can I admit the force of his reasons. For, surely, the French Kings might fairly have urged 'disturbance to the public peace,' in order to justify repression of the Huguenots; and the Spanish have defended the 'expediency' of their horrible *Acts of Faith*, when they inhumanly condemned to the flames thousands of their Jewish or Moorish subjects. If these reasons hold as to secondary, so also as to extreme penalties, on the ground of the general interest of the community. If false forms of Christianity trench on the laws that knit society together, they may be dealt with according to those laws. A wide gulf separates the innocuous forms of religious opinion from fanatics, (like the Circumcellions of Africa, the Anabaptists of Munster, and the Camisards of France,) whose impulse was to burn and to slaughter.

§ 3. S. Augustine's authority is unduly alleged by canonists in favour of persecuting heretics. He judged, indeed, that the fanatic Circumcellions were to be punished by the secular arm; for they were guilty of acts of violence, sacrilege, and incendiarism. But his mind is seen, where, citing the case of Phinehas' action against Zimri, he declares that it signified action by excommunications and

S. Augustine  
no  
favourer  
of Perse-  
cution of  
heretics.

<sup>1</sup> *Vid. apud S. Athanasii ad Imp. Constantin. Apologiam.*

degradations, “at this period when the sword was to cease in the discipline of the visible Church.”<sup>1</sup>

§ 4. Yet I must remark that Public Opinion was even then ripening for the cruel enactments that were passed in later times. Spain, the chief theatre of the Its origin. Inquisition, enjoys the bad eminence of breeding the first cruel persecutors, two sinister bishops, Idacius and Ithacius, who procured the execution of the heretic Priscillian by order of the Emperor Maximus, A.D. 385. At the Synod of Chalcedon, Basil, a bishop of wild and barbarous Isauria, exclaims; “But if Eutyches’ sentiments are beside the doctrines of the Church, he deserves, not merely punishment, but even burning.”<sup>2</sup>

## CHAPTER XX.

### OF SCHISM, WHEN ITS CRIMINALITY IS NOT CLEARLY DETERMINED.

WHEREAS it is evident, that to all not persuaded of the Divine and exclusive right of the See of Rome the Catholic Church of the East and West appears to have been long rent into adverse portions (the Greek and the Latin,) and that political causes chiefly brought about their *schism*; and also, whereas the Anglican Church has long been separated from the churches in communion with Rome, not wilfully nor yet radically, (as is clear from her own avowal,<sup>3</sup> and by her acceptance of their Orders,) but by the act of the Civil Power, supported by a long-standing and widely-spread conviction of the need of Reformation in the Church, asseverated by General Councils: while the *fact* of the Schism is to be deplored, the *criminality* of it must be charged on those who *on either side* have been, and still are, guilty of excess.

<sup>1</sup> De Fide et Operibus, cap. 2.      <sup>2</sup> Labbei Concilia, T. IV col. 137.

<sup>3</sup> Canon 30<sup>th</sup> of A.D. 1603.

While we hear of Clement VIII. describing the act of Paul V. in excommunicating Queen Elizabeth as one which “we deplore with tears of blood,” George Herbert expresses the mind of sound Anglicans, when he intitles the Reformation (in view of the sacrilege and spoliation that attended it) one that “deserveth tears.”

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## CHAPTER XXI.

### OF IRREGULAR MINISTRATIONS.

§ 1. THE grace of the Sacraments is not hindered, as to their essence, when uncanonically ministered among such as are not subject to the ministrant, *or even against the laws, or against the Pope's prohibition.*<sup>1</sup> Effect of Public Estimation of the same. In things depending on Jurisdiction, common opinion makes what is done valid. Not so, as relates to Order; for then it is inferred, that a man ordained by one who was erroneously thought to be a bishop, hath no Order. Yet things so done are valid, as far as deserving goes, because of people's belief in their validity.<sup>2</sup> Ecg briht archbishop of York saith, “We believe that the ministrations performed by an unordained person *usurping the name of Priest*, when the people is ignorant of the usurpation, are NOT to be set aside.”<sup>3</sup> I would extend this charitable presumption to Bodies, (like the Presbyterian in Scotland,) which claim to act in default of the original Church, where the Hierarchy had proved flagrantly unfaithful to its trust, or had even died out of the land.

§ 2. It was held that if the Pope of his certain know-

<sup>1</sup> Petr. De Ancharano *sup. Sext. Decret. V. Tit. De regulis Juris*, f. 206.

<sup>2</sup> “Valent tamen sic gesta, quoad meritum, propter fidem.” (Panorm. VI. f. 216.)

<sup>3</sup> A.D. 734.

ledge, by word or letter, name or otherwise, treat of any person under any title of honour, he was not thereby understood to approve of the same or to confer on him any advantage of right. This maxim will justify us in recognizing Roman Dignitaries in England by their titles, (as is commonly done,) and the ministers of Separatist bodies as ‘Reverend’; so as they challenge not the titles employed by the established Clergy.

*Mere recognition by courtesy confers no right.*

§ 3. Thorndike held that “all ordinations in schism are mere *nullities*, though made by persons rightly ordained, because *against the unity of the Church*.<sup>1</sup> This opinion,

*Are ordinations in schism mere nullities?*

would, from the Roman point of view, nullify Anglican Orders; as also, from the Anglican, the Roman Orders conferred in England; and moreover, those of our Non-jurors in the last century. But when I find “such ordinations made valid by the mere decree of the Church, *without ordaining anew*,”<sup>2</sup> as was done by the Nicene Synod in the case of the Meletians, and offered to be done by Pope Melchiades in that of the Donatists, I scruple to admit that what is *null* can ever be rendered *valid*, and should prefer calling such Orders simply irregular and uncanonical. For how can vigour and life, that is, validity, be imparted to that which hath no existence, that is, a *nullity*?

§ 4. Furthermore, Thorndike argues that the foreign Protestants, who reformed their churches without author-

*Case of the foreign Protestants.*

ity of Bishops, were bound, even in the absence of *presbyters*, to “appoint themselves bishops, priests, and deacons”; and that upon their willingness to submit to “such further laws as

the rest of the Church hath provided, they ought to be acknowledged by the rest of the Church, such acknowledgement to be effectual instead of solemn ordination by persons endowed with power” of conferring Orders. This position he grounds on the strange opinion of a School-

<sup>1</sup> Right of the Church in a Christian State, ch. iii. § 62.

<sup>2</sup> Ibid.

man, William of Auxerre, who wrote that “if there were in the world but three simple priests, one of them should needs consecrate the other as Bishop and the third Archbishop”! But, besides that the School Divines indulged in paradoxes by way of displaying their ingenuity, William was led to this extravagance by the prevalent view of the Pope’s *essential* superiority over bishops, and consequently his consecration by an inferior, whereas he had neither equal nor superior. If Thorndike (from whom I reluctantly differ) rested his case on the act of Pope Melchiades so applauded by S. Augustine,<sup>1</sup> I must urge that the proof is inadequate; for the Donatists in all probability had real Orders, only needing authoritative acceptance. Our English Doctor presumes that the foreign Protestants, professing “all that is necessary to salvation in point of faith and manners cannot easily be condemned to have forfeited the being of a Church.”<sup>2</sup> Over two centuries have done little to strengthen the charitable presumption. ‘Evangelical’ Prussia retains the simplest Creed at the pleasure of an aged Prince: Switzerland has declared even Baptism unnecessary to Communion: Huguenot France no longer expresses the conservative instinct of a Guizot.

§ 5. In connection with this subject, a remarkable passage occurs in the Canon Law, to the effect that the Remark. omission of Baptism doth not injure him who able judg- believes on probable grounds that he has been Pope In- baptized.<sup>3</sup> “We assert unhesitatingly,” says nocent III. Pope Innocent III., “that the Priest, whom you signify to have died *without baptism*, was released from original sin and has obtained the joy of heaven, for that he persevered in the faith of the Church and in the confession of Christ. Read what Austin saith, ‘Baptism is invisibly administered to him, whom the last necessity, not contempt of religion, excludes.’ Also Ambrose, ‘Keep to the judgment of the Fathers and let the questions of the Schools rest.’”

<sup>1</sup> Epist. 43.

<sup>2</sup> Right of the Church &c. ch. v. § 61.

<sup>3</sup> Decret. Greg. III. Tit. xlvi. c. 2.

## CHAPTER XXII.

## OF SORCERY, WITCHCRAFT, &amp;c.

THE entire subject of sorcery and witchcraft is one on which the modern intellect universally shrinks from the belief we see assumed in Scripture as beyond a doubt, and uniformly upheld in the Church till long after the Reformation. The Canon Law condemns this class of offences in all its branches, from the least harmful *Sortes Sanctorum*, branded by the Council of Agde (canon 46,) to the pretences of the luckless beldames, who “professed to ride in the air at dead of night in the train of Diana or Herodias, and so traverse distant lands.”<sup>1</sup> Even the inspection of an astrolabe in order to discover a thief is visited on a priest with a year’s suspension from celebrating, by order of Pope Alexander III.<sup>2</sup> In England, Henry IV. A.D. 1406, empowered the bishop of Lincoln to imprison all “sorcerers, magicians, enchanters, necromancers, diviners, soothsayers, and *phitones*” (“pythones” i.e. ventriloquists) found in his diocese.<sup>3</sup> In 1438, one Agnes Hancok, accused of professing “to heal children touched by the spirits of the air, whom the vulgar call *Feyry*,” abjures before the bishop of Bath and Wells.<sup>4</sup> The Reformation made no difference. In 1559, Bishop Jewell found “the number of witches and sorceresses become enormous” in the West of England.<sup>5</sup> Later on, in 1574, a man was “charged with invoking evil spirits in a wood in Hertfordshire, to gain divers large sums of money.”<sup>6</sup> William Fulbecke, in his curious ‘Parallel or Conference of the Civil, Canon, and Common Law of England,’ makes his Canonist say, that the Witches’ Sabbath or adoration of the Devil is done “in woddie places, or in caues vnder y<sup>e</sup> earth, w<sup>ch</sup> are farre remote and distant from the places of

<sup>1</sup> II. Decr. Caus. xxvi. qu. 5.<sup>2</sup> Decret. Greg. V. Tit. xxi. c. 2.<sup>3</sup> Rymer, Foedera.<sup>4</sup> MS. Harleian. 6966.<sup>5</sup> Zurich Letters, Vol. I. p. 44.<sup>6</sup> Rymer.

men's conuersation. In such desolated places or ruined castels this mischiefe is celebrated; and commonly it is done in y<sup>e</sup> darkenes of a most tempestuous night, for the Diuell falling from Paradise fell into extreame darkenes, and by defect of grace deliteth in darkness.”<sup>1</sup>

We have seen much of what is condemned in these weird attempts to effect a direct intercourse with the world of spirits, revived under the name of *Spiritualism*, and gaining adherence even among those who profess obedience to the Church. Were it only for the ludicrous and profane aspect of its pretended communications, there can be little doubt that it merits, and would of old have received, the chastisement due to such as in their hearts depart from entire dependence on Almighty God.

## CHAPTER XXIII.

### OF USURY.

THE ancient Fathers and Councils, following Deuteronomy chap. 23, with one voice condemn usury or, as it would seem, all interest on money loans. The Council of Agde thus defines Usury: “Usury is when more is asked in return than is given. For instance, if you have given ten *solidi* and ask more, or one bushel of wheat, and exact something over.”<sup>2</sup> There is no point, on which the Canon Law is more opposed to modern usage, than on this of usury; in so far as the regulation of Interest of money and the exigencies of Commerce in our day so widely differ from the transactions effected, when the Canon Law prevailed;—when the extortions of Jews, Cahorsins, and Lombards provoked infamy or plunder, according as they did or did not succeed. There exist, however, various forms of peculation and commercial villainy, unknown to our ancestors; whereby under the respectable veil of

<sup>1</sup> Fol. 96.

<sup>2</sup> Decret. Caus. xiv. qu. 5. c. 4.

Banks, fictitious Companies, and the like, men avoid the coarser methods of the older sinners ; while they justly purchase the condemnation incurred by usurers.

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## CHAPTER XXIV.

### OF EXCOMMUNICATION.

**§ 1. ANATHEMA** or the *greater* Excommunication is called ‘the Bishop’s sword,’ because bishops alone ought to utter it, and implies separation from the fellowship of the Faithful. It used to be attended with solemnity, to inspire greater awe ; twelve priests standing by with lighted candles, and on promulgation of the sentence by the bishop trampling them under foot. This somewhat theatrical piece of Ritual, with the elaborate curses accompanying it, added nothing to the power of Excommunication ; and when disregarded cast ridicule on the proceedings.<sup>1</sup> The *lesser* Excommunication is the suspension of a Christian from communion for a definite period. An excommunicated person cannot be restored save by authority of the bishop that excommunicated him, lest the episcopal dignity be violated by another bishop.<sup>2</sup>

**§ 2.** Being remedial, not mortal, Excommunication cannot be pronounced against any one, save after suitable monition made in presence of witnesses.<sup>3</sup> And Under what conditions can Ex-communication take place ? the sentence duly written, sealed with an authentic seal, and expressing the grounds thereof, should be delivered to the excommunicated person within a month.<sup>4</sup> It is to be carried out, not because of an offence, but because of consummacy arising out of the same.<sup>5</sup> No bishop is to suspend

<sup>1</sup> Panorm. III. f. 27. II. f. 112.—Fleury, Discours 3<sup>me</sup>.

<sup>2</sup> Council of Arles, can. 17. <sup>3</sup> Fourth Council of Lateran, can. 48.

<sup>4</sup> Sext. Decret. V. Tit. xi. c. 1.

<sup>5</sup> Panorm. II. f. 113.

an orthodox person from Communion for light reasons, only for those offences, ('certain and plain cases of sin,') for which the old Fathers have ordered the doers to be driven from the Church.<sup>1</sup> Nor should a Metropolitan absolve the subject of his suffragan excommunicated by him for a manifest excess.<sup>2</sup>

§ 3. Excommunication is always presumed just, until the contrary is proved. But if an Appeal has been made, although it suspends not the binding force of Excommunication, yet *it suspends the presumption of justice*; whence it is necessary that the superior should prove it just.<sup>3</sup> Two notable effects follow an Appeal; first, it suspends or extinguishes the matter adjudicated; secondly, it devolves a cause to a superior.<sup>4</sup>

§ 4. If a priest knows for certain that a man is guilty of a crime, or if that man has confessed but will not amend, the priest may not remove him from communion by name, though he know him to be guilty; for he knows it not as a judge, but as God's minister: but he ought to admonish him not to obtrude himself.<sup>5</sup> If a person charged with a crime has confessed it to a priest, but denies that he did so, the latter must not think it an injury, that he alone is not believed. If the priest alleges scruple of conscience as a bar to his communicating with the person so denying, he is to be himself removed from communion, that he may beware of saying against any one what he cannot prove by documents.<sup>6</sup> In case of an unjust excommunication the words of S. Augustine hold good: "He is not therefore outside the Church, who is compelled by the Pastor's prejudice to be outside."<sup>7</sup>

<sup>1</sup> Fourth Council of Orleans, can. 2.      <sup>2</sup> Decret. Greg. V. Tit. xxxix. c. 40.

<sup>3</sup> Panorm. II. f. 112.

<sup>4</sup> Ibid. f. 115.

<sup>5</sup> Decret. Greg. I. Tit. xxxi. c. 2.—Panorm. II. f. 111.

<sup>6</sup> Ex Concilio Africano, can. 100.—II. Decret. Caus. vi. qu. 2. c. 3.

<sup>7</sup> Homil. 23.—II. Decret. Caus. I. qu. 1. c. 82.

§ 5. The clergy of the Western Church during the Middle Ages are responsible for the total abeyance of

Loss of Excom-  
mu-nica-tion, to whom due ?

Public Excommunication and Open Penance. For they set the example of disregard of the same, when they converted Excommunication into an instrument for the recovery of debts, and even taught people by their own example

that the loss of a benefice was a severer penalty (because the ultimate) for a clerk than the excommunication he had previously incurred.<sup>1</sup> The Council of Merton A.D. 1300, fined or suspended clerks, if through fear or otherwise they failed to demand their tithe. Their only remedy for disregard of censures was to pass fresh censures ending in mockery, or to exhibit Church and State banded together to crush the weak, while dissembling in presence of the strong. They had need to re-establish the authority of the Church on just claims of its Ministers to respect and on a living faith in eternal penalties and rewards.<sup>2</sup> Erasmus found in the sanguinary wars in Germany arising out of the Excommunication of the Suabian Emperors an argument to prove it Anti-Christian ; this simply discredits the ancient Church, and they that are possessed with the notion must be prepared to arraign S. Paul himself. But Thorndike, the Anglican divine who (before Beveridge) had chiefly grasped the entire subject, lays down this judgment : "Certainly the Church of England is not but in name, till the power of excommunication be restored unto it, which there was not, nor ever can be, sufficient cause to take from any Church."<sup>3</sup>

<sup>1</sup> Flenry, Hist. Ecclés. l. lxxxvii. c. 34 ; citing the Council of Angers A.D. 1279.

<sup>2</sup> Ibid. ch. 38.

<sup>3</sup> Works, Vol. II. p. 479, ed. Oxford, 1844.

## CHAPTER XXV.

## OF EXCOMMUNICATIO OF RULERS.

§ 1. A SUFFRAGAN is subject to his Archbishop, as regards ordinary jurisdiction. Whence it would be absurd, That of that he should judge or condemn his immediate Bishops. superior; yea rather, the latter is to be convened before the Patriarch.<sup>1</sup> Dioscorus of Alexandria was condemned, not for heresy, but because he had excommunicated Leo, *Archbishop* of Rome. Not because he acted justly or unjustly, but because Leo was his superior.<sup>2</sup> The opinion that an inferior cannot bind his superior is true in judicial proceedings; but the contrary is safer in the tribunal of penance.<sup>3</sup> Such is the general law. But in an extreme case the main end of the Church, namely, the salvation of souls, would imply a different solution. “If bishop or priest were to venture to withdraw from communion with his superior, because of heresy condemned by holy Synods or Fathers, *when the superior publicly preaches heresy*, such an one would not be subject to canonical censure, but even be deemed worthy of honour by orthodox men. For they whom he condemned would be false Pastors; nor would he be regarded as breaking up the unity of the Church, but as zealous to deliver it from divisions.”<sup>4</sup>

§ 2. Since the Reformation, especially under the Tudor and Stuart dynasties, the Church of England has in a That of manner held the person of the Sovereign so Princes. sacred, as even in theory to be exempt from ecclesiastical censures. And if Excommunication be taken to carry with it civil penalties, it is clear that the Church

<sup>1</sup> Hostiensis, I. f. 175.—Decret. Greg. I. Tit. xxxiii.

<sup>2</sup> I. Decret. Dist. xxi. c. 9.

<sup>3</sup> Hen. De Bouhic *sup.* Decret. I. f. 67.

<sup>4</sup> Council of Constantinople I. & II. can. 15, *ap.* Bevereg. Synodic. I. 354.

cannot in fact apply such an instrument against the Power from which she derives her coercive jurisdiction. It was otherwise when she professed her belief that Christ had committed to S. Peter, (and through him to ‘the Bishop of Rome,’) the two swords, namely, of Spiritual and of Temporal Authority. The modern Church of Rome, still maintaining that belief, is consistent, when she asserts that “supreme circumstances” (such are the words of Pius IX.) may arise, when a Prince deviating, say, from the express moral Law of God, or apostatizing from the Faith, may be smitten with the spiritual sword of Anathema; even though the act be attended by consequences fatal to his authority. Our Church doth not contemplate such “supreme circumstances.” But in any case she condemns as “impious and heretical” such invasion of the province of the Civil Power, as that the Spiritual should assume to deprive Princes of their crowns, and, worse than all, to absolve their subjects from their allegiance or suggest their murder or execution. Long ago, the Sixth Council of Paris in A.D. 823, (canon 26,) remarked that a prime source of disorder was the interference of the Royal and Sacerdotal Powers outside their respective provinces. While S. Paul teaches us that the weapons of our warfare are not carnal, he also enjoins passive submission to kings and to masters, not the good alone, but also the foward. Yet that submission is not absolute, but limited to the proper sphere of the Powers that be. When we render his own to Cæsar, our Lord by implication forbids us to render to Cæsar “the things that are God’s.”

If Cæsar becomes Christian and claims *rights* belonging to such condition, he ought in reason to submit, as did Theodosius, to the exercise of the Keys, if his wicked living calls for his suspension from the communion of the Faithful; in such wise however as not to discharge his subjects from their civil obligations to him. For notorious offences, “Princes and public persons,” says Thordike, “are subject to the censure of the Church,” including

the transient state of abstinence from the Eucharist.<sup>1</sup> And though Hooker, granting thus much, denies that the Sovereign can be subject to the greater Excommunication;<sup>2</sup> yet, as Thorndike has it, "if he give not satisfaction to the Church, he becomes contumacious, and so liable to the last sentence" of Anathema. Nor doth even that extreme measure necessarily involve disobedience to the sovereign, save so far as obedience enforces compliance with that which hath compelled the recourse to Anathema. Gregory VII. excuses "all who are not courtiers to the extent of counselling the perpetration of crime."<sup>3</sup> We cannot conceive the occurrence of such a case under the circumstances of modern society. Yet the instance of Boleslaus king of Poland in the Middle Ages seems to justify the fulmination of Anathema, if the Christian Religion was at all to benefit mankind.<sup>4</sup> Nor must I forget to point out that, while we condemn in strong terms the Romish doctrine of Deposition of Princes, our forefathers in 1688 had no scruple to act successfully on its lines. Let me formulate *their* principle of action. "*Protestants* may not tolerate a *Popish* king, if he endeavours to draw over his subjects to his persuasion. But to judge whether he doth so or not belongs (not to individuals, but) to the *Parliament*, to whom the care of religion is committed. Therefore it is the business of *Parliament* to judge whether a king is to be deposed or not." For *Protestants* read 'Christians,' for *Popish* 'infidel' or 'heretic,' and for *Parliament* 'the Pope;' and we have the very words of Cardinal Bellarmine on the subject.<sup>5</sup>

<sup>1</sup> Right of the Church &c. ch. iv. §§ 84, 81.

<sup>2</sup> Bk. VIII. ch. 9. <sup>3</sup> Corpus Juris Canonici xi. qu. 3.

<sup>4</sup> See my *Sanctorale Catholicum*, p. 221.

<sup>5</sup> De Romano Pontifice, lib. V. c. 7.

THE END.





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